Illegal migrants in Canada

A Report to the Honourable Lloyd Axworthy
Minister of Employment and Immigration
from W.G. Robinson, Special Advisor

A REPORT TO

THE HONOURABLE LLOYD AXWORTHY

MINISTER OF EMPLOYMENT AND IMMIGRATION

ON

ILLEGAL MIGRANTS IN CANADA

FROM

W.G. ROBINSON

SPECIAL ADVISOR

JUNE 1983

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CONSEILLER SPECIAL – POLITIQUE D'IMMIGRATION

June 1983

The Honourable Lloyd Axworthy, P.C., M.P.
Minister of Employment and Immigration
House of Commons
Ottawa, Ontario
K1A 0A6

Dear Minister:

I have the honour of presenting to you my report on Illegal Migrants in Canada.

In accordance with my mandate, I have co-ordinated further dialogue and analysis of the report of the Canada Employment and Immigration Advisory Council entitled Illegal Immigrants. Throughout my work, I have been conscious of your initial statement that "The sensitive issues raised by the Council's report warrant the broadest possible study and consultation..."

In the pages which follow it is, perhaps, even more clear than it was at the outset of my task that the problem of illegal migrants is a complex and universal phenomenon. Whether Canadians are moved primarily by indignation or by compassion at the illegal presence of a significant number of persons in our country, anyone who gives serious thought to the issues soon realizes that the choice of solutions is seldom easy.

Therefore, this report has been written with a view, not only to recommending specific courses of action which you might adopt, but also to providing a broad elaboration of the background and issues which might offer a useful starting point for ongoing discussion of the problem. In view of your intention to make the report public at the first opportunity, it has been written in the form of a public report rather than as one addressed directly to you.

Finally, I wish to express my appreciation to all of the individuals and organizations who co-operated so conscientiously in responding to the Issues Paper, the effects of which are in evidence throughout this report. In addition, I wish to mark the very special contribution of the newly appointed Director of the Human Rights Center, Professor Ed Ratushny of the Ottawa Law School. Professor Ratushny's role as Chief Counsel and Director of Research has been fundamentally important in the preparation and publication of the Issues Paper and of this report.

Yours sincerely,

W.G. Robinson

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SUMMARY OF OBSERVATIONS, CONCLUSIONS AND RECOMMENDATIONS

CHAPTER ONE: BACKGROUND AND INTRODUCTION

A. The Process

The decision to seek broad public consultation on the question of illegal migrants has been enthusiastically endorsed by wide public interest and response. Close to 1,000 letters and briefs have been received from individuals, organizations and government bodies from all parts of Canada. The media have played an extremely important role in contributing to the success of the consultative process through an enthusiastic yet moderate and responsible exposition of a potentially highly inflammatory subject.

B. The International Context

Even the most perfunctory inquiry into the problem of illegal migrants leads to the firm and accurate conclusion that it is a universal problem. Indeed, the situation in Canada pales in comparison with that in many other countries throughout the world.

Before discussing the perceived causes of illegal migration to Canada, a brief survey is conducted on the current situation in what traditionally are the larger migrant-receiving countries, all of which have societies similar to our own. The United States, West Germany, France and Australia are examined.

C. Causes of Illegal Migration to Canada

As a result of the many representations received from a wide variety of knowledgeable sources, we are of the view that not only economic opportunity but also family relationships are significant in attracting illegal migration to Canada. It was pointed out, for example, that family members are better able to harbour illegals, provide safe employment and make other arrangements which make detection less likely.

However, while recognizing that, particularly in some cultures, strong family ties may exist even amongst distant relatives, distant relatives may also be willing to assist in enhancing economic opportunities even when there is no strongly felt familial relationship.

The submission of the Canadian Bar Association (C.B.A.) offered the most comprehensive analysis of the reasons for illegal migration to Canada which we received. (Appendix A) These are summarized.

The problem of misinformation, often generated by unscrupulous consultants, was addressed in a discussion paper issued by Mr. Axworthy in April 1981 entitled "The Exploitation of Potential Immigrants by Unscrupulous Consultants".

D. The Nature of the Problem

Many Canadians wrote to express their views as to the deleterious effect of illegals on the economy and, particularly, in relation to unemployment, the burden on welfare and the failure to pay taxes. However, in the absence of better evidence, it is far from clear that such adverse consequences do occur.

The most obvious consequence of illegal migration to Canada is that our carefully established and administered selection criteria are not applied. These requirements are very real protections to Canadian citizens in ensuring that the immigrant will not readily become a burden on our social and health systems, or import a health problem or criminal threat to Canadian society.

However, the greatest negative feature of illegal migration to Canada may be its impact on the integrity of our country. The right and duty to control immigration across a country's borders has been described as a universally recognized and fundamental characteristic of a sovereign state.

CHAPTER TWO: SCOPE OF THE PROBLEM: NUMBERS

A. Background

The responses to our Issues Paper did not provide much assistance in ascertaining a more precise estimate of the number of illegal migrants in Canada. Nevertheless, the widespread perception was that the Advisory Council's estimate of 200,000 illegal migrants in Canada today was too high.

B. Recent Studies

The difficulty and, indeed, impossibility of obtaining an accurate estimate of the illegal population is obvious since it is an attempt to count the unknown. Once illegal migrants are known, they are subjected to enforcement procedures and are no longer a part of the problem.

The Canada Employment and Immigration Commission has now completed a study of enforcement cases at the Vancouver, Toronto and Montreal Immigration Centres. There may be some shortcomings in data and methodology due to the limited time available for completing the study. However, we consider them to be the best estimates available to date.

Recommendation: The figure of 50,000 should be accepted as a "working figure" for the estimate of the maximum number of illegal migrants in Canada at the present time.

Recommendation: The Immigration Commission should make public its current studies estimating the number of illegal migrants in Canada. The involvement of knowledgeable members of the public and of the academic community should be encouraged, with a view to generating independent studies.

Recommendation: A revision of the Commission's "working figure" should be published at least every three years in the Annual Report to Parliament on Immigration Levels, together with a description of steps being taken to deal with the problem.

The Commission's studies also provided some further insights into the "profile" of illegal migrants in Canada. On a national scale (based on the studies of the three centres of Vancouver, Toronto and Montreal), the most frequently encountered nationalities subjected to enforcement proceedings were as follows: Jamaican (25.9 per cent), American (16.0 per cent), Indian (11.2 per cent), Guyanese (7.1 per cent) and Portugese (5.3 per cent).

C. Conclusion

We do not believe that the problem of illegal migrants in Canada is of crisis proportions. Nevertheless, we share the view of the Advisory Council and most of those who responded to us that it is a significant problem warranting an immediate and co-ordinated response as well as increased attention on a continuing basis.

Canada has not experienced the degree of seriousness of illegal immigration which other immigrant-receiving countries have. However, that is not to say that we should be complacent. The pressure of illegal migration may well increase world-wide, and we will not be immune.

CHAPTER THREE: GENERAL AMNESTY

A. Conditional Settlement Program

The Advisory Council recommended a "Conditional Settlement Program". While the proposal is an innovative attempt to grant relief without being seen to condone the transgression of illegal migration, we are of the view that it does not provide an appropriate response to the present situation in all circumstances.

B. "Project 97"

The present situation is considerably different from that which preceded the decision to grant an amnesty in 1973. There is no major revision contemplated of the immigration laws and regulations as there was in 1973. Nor is there a visible crisis of the proportions which existed at that time.

While there are continuing difficulties and delays in processing, the system cannot be characterized as facing the imminent collapse which was present in 1973. Moreover, the last estimates available suggest that the illegal population is a fraction of that which formed the premise for the 1973 general amnesty. Perhaps most significantly, there is a total absence of broad public support for a general amnesty program at the present time.

C. Public Response

Apart of a number of form letters from one community, the number of representations favouring a general amnesty was very limited.

D. Rejection of General Amnesty

On June 2, 1983, Mr. Axworthy stated publicly in the House of Commons that he rejected a general amnesty in Canada as a solution to the problem of illegal migrants in Canada. At the same time, he announced that our report would be tabled before the Standing Committee on Labour, Manpower and Immigration at the end of June, and would provide further elaboration. Opposition immigration critics, Mr. John McDermid, M.P. (Progressive Conservative), and Mr. Dan Heap, M.P. (New Democrat), publicly expressed their support for this decision.

The reasons for rejecting a program of general amnesty may be summarized as follows:

(a) It would be a subversion of the "selection" process for immigration to Canada.

(b) It would discriminate unfairly against those who apply in accordance with the law.

(c) It would create expectations of further amnesties in future and act as a magnet in attracting even more illegal migrants.

(d) Quite apart from the subversion of our selection process, the integrity and credibility of our immigration system would be further diminished by retreating from the government's strong policy statement less than 10 years ago, which rejected future amnesties.

(e) Experience with amnesties in other countries has also uncovered other negative features of amnesties.

Recommendation: The Minister of Employment and Immigration and other representatives of Canada should emphasize that it is government policy not to adopt programs of general amnesty in future. This message should also be included in literature abroad which describes our immigration programs.

CHAPTER FOUR: "CASE-BY-CASE" DISCRETION

A. The Exercise of Discretion in our Immigration Law

The current scheme of the *Immigration Act* and Regulations is to express the law in strict and rigid terms but to repose a broad discretionary power in the Minister to make exceptions in appropriate cases.

The granting of a broad discretionary power can be viewed as a useful device to temper the rigidity of written rules, which can never envision all of the circumstances which may arise. On the other hand, it may be viewed as the very antithesis of the principle of the rule of law, with the potential for unbridled arbitrariness.

The Immigration Act recognizes that there may be a need for the Minister to temper the strict application of that Act and its Regulations with individual judgment in specific cases. Moreover, while Parliament must have intended that such judgments would form the exception rather than the rule, the Act also seems to recognize that they would occur in significant numbers.

The attempt to exercise these discretionary powers in a quasi-judicial forum contributed directly to the virtual breakdown of our system in 1973, leading to the general amnesty. When the new legislation was developed, a conscious decision was taken to limit the jurisdiction of adjudicators. No discretion is permitted, even where infractions may be viewed as extremely insignificant. As a result, the discretion was reserved for the administrative sphere, on "humanitarian" and related grounds, and was implemented by means of ministerial permits.

The vast majority of these decisions to avoid the harsh consequences of our immigration laws are made by officials as "delegates" of the Minister under "guidelines" established by the Immigration Commission. Many cases are not difficult. However, the decision is not always easy, and the more difficult it is, the more likely it is that the file will end up on the Minister's desk for a personal review. The nature of the Minister's role in this connection was articulated by Mr. Axworthy not long after he assumed the Immigration portfolio.

If Canadians are to have confidence in the immigration system, it is important that they understand it. After all, it is their system, and they have the ultimate power to change it. Our consultative process revealed a tremendous interest in this subject and also some lack of understanding, generally, of our laws and how they are applied.

B. "Case-by-Case" Discretion in Relation to Illegal Migrants

While illegal migrants in Canada must ordinarily be subjected to regular enforcement procedures, there are specific cases where exceptional treatment is warranted. This approach is well-established under our existing laws and was generally accepted as desirable by those respondents who specifically commented on it.

The significant difference between an amnesty and discretionary consideration of specific cases is that an amnesty treats a broad range of cases indiscriminately. "Case-by-case" discretion isolates those specific situations which, on their merits, warrant exceptional treatment.

The issue is not merely one of compassion, although the alleviation of misery and fear is obviously desirable. The integrity of our immigration system is also adversely affected where anomalies are created. The integrity of our country is also diminished through the long-term build-up of a population of totally established and integrated residents who are without legal status.

We are of the view that the mechanism for case-by-case discretion to permit the landing of illegal migrants must remain outside the judicial or quasi-judicial process. The decision requires the kind of judgment which renders it best left in the administrative sphere, with ultimate political accountability.

It is important that the criteria for landing be sufficiently unique to distinguish these cases from all other enforcement cases. The criteria must also be sufficiently clear to ensure an acceptable degree of uniformity, consistency and fairness. The process must generate sufficient confidence that those eligible will come forward. Finally, there must be some incentive to apply even at the risk of a negative determination. In sum, this process must balance the need for sensitivity to specific cases against the integrity of the selection system and enforcement. Compassion must be exercised without bringing the administration of the law into disrepute. A balance must be found in the context of the elusive standard of community tolerance.

The immigration guidelines provide that a discretion may be exercised by an officer to recommend landing in Canada on the basis of humanitarian or compassionate considerations. A number of respondents commented on the inconsistency in the exercise of discretionary powers by Commission officials. We are of the view that the discretionary power to land long-term illegal residents has been vastly under-utilized.

C. Proposed Changes

Recommendation: The criteria and procedures for granting discretionary landing to long-term illegal residents should be established independently of the criteria for other discretionary landings.

Recommendation: Long-term illegal residents who apply unsuccessfully for discretionary landing should be permitted to depart voluntarily without prejudice to an application for landing from abroad or future entry as a visitor. Those who are detected through regular enforcement procedures and are denied discretionary landing under this process should normally be deported.

Recommendation: Illegal residents who were eligible to apply under the 1973 general amnesty and who have resided in Canada continuously since then should now be assessed for discretionary landing under the criteria which prevailed under that program.

Recommendation: The following criteria should be established for the discretionary landing of illegal migrants:

(a) The length of time the candidate has remained illegally in Canada (with a minimum period of five years for eligibility).

(b) The absence of convictions for serious offences (with immigration-related offences distinguished from criminal offences).

(c) The circumstances leading to the decision to become illegal and to continue in that status.

(d) Present and future capacity for successful establishment and integration into Canadian society.

(e) The presence of immediate, extended and de facto family ties in Canada.

(f) The presence of children, and particularly children born in Canada.

(g) The situation in the applicant's home country.

All of these criteria require more detailed elaboration, and the list might be expanded.

We do not believe that these decisions are appropriately rendered in a quasi-judicial sphere. They should continue to be exercised under the rubric of the Minister's discretionary authority under the legislation. Moreover, while there is a strong attraction to community involvement in this area of decision-making, the problems of uniformity of treatment and consistency from region to region could be compounded. On balance, we believe that the best approach at this time would be to leave the effective decision-making with immigration officials but to centralize it within each region and subject it to central review.

Recommendation: All cases of long-term illegal residents who are eligible for landing should be dealt with by a single senior authority in each region, designated by the Minister for that purpose.

Recommendation: All decisions at the regional level which deny landing to long-term illegal residents should be reviewed automatically by a committee of senior officials in Ottawa appointed by the Minister for this purpose.

Recommendation: The Minister should monitor closely and regularly the manner in which this decision-making is being exercised by the committee of senior officials, and should issue guidelines from time to time as required.

Recommendation: Committees of citizens knowledgeable in immigration matters should be established in each of the regions to monitor and report to the Minister on the success of the process for landing long-term illegal migrants and on the continued appropriateness of the criteria which are being applied.

Recommendation: Voluntary, non-governmental organizations should be encouraged to act as advocates and agents for illegal migrants. Financial assistance should be provided to these organizations if the additional burden of work which they encounter proves to be substantial.

Recommendation: Long-term illegal migrants should be permitted to make a preliminary application in writing, anonymously. A preliminary ruling should be given which would be binding if the information were true, if no other seriously significant facts existed and if the decision were positive, subject only to medical and security clearance.

The gist of our recommendations in this chapter is to provide an effective mechanism to deal on a continuing basis with long-term illegal migrants. If that mechanism is properly tuned, it will land those who should be permitted to stay, encourage others to leave Canada and tell us much more about the number of other illegal migrants in our midst.

CHAPTER FIVE: BORDER CONTROL: VISITOR VISAS

A. The Present System

Existing procedures at ports of entry require persons entering Canada to proceed through a "primary inspection line" (PIL). They are then examined briefly (an average of 20 to 30 seconds) by a customs officer, who performs this initial entrance examination on behalf of the departments of Immigration, Health and Agriculture as well as Customs.

B. Problems

The Auditor General concluded that there is a lack of control at ports of entry to Canada. He concluded that a significant factor was the reliance on customs officers. The view has also been expressed to us that further training would never give sufficient emphasis to immigration concerns as long as the function is being performed by customs officers.

Our ocean barriers on three sides and the more favourable climate to our south provide considerable natural assistance in terms of border control.

The implications of the illegal migrant movement to the United States, together with proposed changes to its immigration laws, warrant monitoring and analysis by Canadian immigration officials.

All indications are that the entry of illegal migrants into Canada through shortcomings in border control is relatively low. Most illegal migrants entered as visitors who were authorized to remain for up to three months, but who overstayed. Nevertheless, we are of the view that improvements in border control can be made.

C. Electronic Exit Control System

In order to be of much value, a system that determines the presence of illegal migrants by recording those who enter and those who leave and then comparing the two records must be almost "fail-safe". The difficulty of establishing a completely reliable system of recording is significant when one considers the volume of visitors and the number of ports of entry distributed over a large geographical area.

It would be crucial to any such system to provide for examination of visitors upon departure as well as upon arrival. At present, there is no authority in the Immigration Act to examine persons who are departing from Canada. The perceived benefits would have to be weighed against the inconvenience to all persons leaving Canada (including Canadians), passenger traffic at airports and the cost of doubling immigration interviews at ports of entry.

Recommendation: A comprehensive electronic system of entry and exit controls, with complete linkage to all posts abroad, should be established as a long-term goal for our immigration system. Future airport renovation and all other related planning should take such a system into account. Meanwhile, continued improvement of computer capability should proceed as rapidly as possible.

D. Other Border Control Initiatives

It appears to us that a certain inertia has developed in relation to any possible changes with respect to the immigration function at ports of entry. We believe that experimentation should occur through a series of pilot projects, which might have useful control and enforcement consequences as well as providing better information as to what future direction broader changes might take. Mere variation of procedures would have a value in itself in reducing the predictability of the system by those who wish to enter fraudulently.

Recommendation: A pilot project should be established at a limited number of airports to test the effectiveness of separate primary inspection lines. Customs officers should be replaced by immigration officers at the non-Canadian lines.

Recommendation: A pilot project should be established to duplicate and thereby compare the relative effectiveness of immigration and customs officers in relation to primary immigration inspection.

Recommendation: Landing cards should be introduced on a limited "trial" basis for visitors entering Canada. If proven to be of value, their use should be made universal.

Recommendation: A pilot project should be conducted whereby entire flights would be referred for secondary examination and subsequent monitoring.

Recommendation: Clear objectives and monitoring procedures regarding pilot projects should be established. Projects should be carefully explained to the public and should be sensitively designed and administered by officials.

E. Extended Visitor Visa Requirements

Under the Immigration Act, a visitor visa is required for entry into Canada from any country unless that country is specifically exempted from the visa requirement. In practice, approximately 80 countries are exempt from the visa requirement, while 85 countries are covered. Apart from visitors from the United States, in 1981, 85.5 per cent of visitors came from countries which are visa exempt, while only 14.5 per cent entered with visitor visas.

The bases upon which Canada has granted exemptions in the past are varied. They include traditional, historical, economic and cultural ties; volume of visitor traffic; bilateral agreement; and reciprocity.

In many respects, the imposition of a visa requirement is the most effective of all control mechanisms. It permits a screening of applicants abroad so that, at least, the most blatant cases of non-genuine visitors may be excluded. If entry is denied abroad, there is effective control without the cost of transportation to the "visitor" who is turned back at entry or the cost to Canada for enforcement and removal after an overstay following entry. Genuine visitors benefit since the screening abroad means that they rarely encounter difficulties upon arrival at a port of entry. If they are denied entry, they have the right of appeal to the Immigration Appeal Board.

In every instance where visas have been introduced as a control mechanism, there has been a significant reduction in the rate of removal from Canada of illegal migrants from the country concerned.

By far the majority of respondents favoured the extension of the visa requirement as a method of border control. We are in complete agreement and see the visitor visa requirement as an important and effective technique of border control.

However, we also recognize that the decision to remove a country from the "exempt" category must be made by the government rather than by a single minister.

Recommendation: The government should undertake a major review of the list of visa-exempt countries and, in the absence of compelling reasons, should remove all countries except the United States.

We consider the rate of removals to be a reasonable indicator to trigger the elimination of a visa exemption. However, we prefer a comprehensive review and drastic reduction of the exemption list.

Recommendation: If there are special reservations in relation to the elimination of the visa exemption for certain countries, the elimination might be subject to re-assessment after three years.

Recommendation: The decision to remove a visa exemption should take into account the human rights record of the country in question.

Recommendation: Steps should be taken by the Commission to provide information to posts abroad on a regular basis in relation to enforcement.

Before an exemption is eliminated, the Minister should be satisfied that processing facilities and resources are adequate. However, the cost of such resources would be relatively small in comparison with the costs of investigation and removal of an illegal migrant who is in Canada.

Recommendation: A processing fee of $50 per application should be imposed for processing visa and other applications (with certain specified exceptions).

Recommendation: A visitor sponsorship form should be developed and made available at all Canada Immigration Centres whereby Canadians could assist visa applicants abroad.

CHAPTER SIX: ENFORCEMENT WITHIN CANADA

A. General Enforcement Policy

It should not be assumed that a "reactive" enforcement policy necessarily leads to an unacceptable level of enforcement. The type of offender must be kept in mind. Since it is not a single transgression but a continuing "status" offence which is involved, the chances of the offender being revealed are relatively high.

A "proactive" approach requires investigation based solely upon suspicion. The implications are for "targetting" certain groups, including visible minorities. Similarly, since employment of illegals tends to occur in certain industries, "spot checks" of certain hotels, factories, etc., with a high number of employees from certain ethnic groups might be expected.

If a truly proactive enforcement policy were to be pursued, consideration would have to be given to providing increased powers of investigation through legislation. In weighing possible legislative encroachments upon the freedom of individual Canadians, it is customary to ask whether the evil is so great as to warrant such a far-reaching response.

While there are a number of areas in which we feel that improvements may be made, we have not found a compelling need for a much more intensified and aggressive enforcement policy.

Recommendation: Canada should continue with an essentially "reactive" enforcement policy, with certain improvements.

Recommendation: The current practice of fingerprinting deportees only in special circumstances should be continued in the absence of a demonstrated need for comprehensive fingerprinting.

B. Prosecution

There is little doubt that the area of employment provides one of the most fertile areas for enforcement in relation to illegal migrants. The prospect of employment may be a strong motivating factor in the decision to enter or remain in Canada illegally. If employment opportunities can be reduced, that motivation should also diminish.

A number of reasons have been given for the infrequency of prosecution and the relatively low conviction rate. These include:

(a) The difficulty of proving knowledge on the part of the employer that the employee was not authorized to work.

(b) Delays in bringing cases to court, which extend the period during which the illegal's removal must be delayed (since the employee will often be the most important witness at the trial).

(c) Minimal sentences, which lead to the conclusion that the deterrent effect is not worth the time, cost and effort.

We received a number of comments and observations to the effect that the central difficulty with respect to the prosecution of employers was not the existing legislative provisions but the low priority which these prosecutions receive. It has been suggsted that greater will and better co-ordination amongst RCMP officers, immigration investigators and Department of Justice prosecutors could lead to far greater success. We are of the view that a measurement of the effectiveness of the existing employer sanction provisions is not possible in the absence of a concentrated effort to apply them.

Recommendation: Efforts should be made to measure the effectiveness of existing employer sanctions through greater priority in their application.

The Social Insurance Number (SIN) card system has not proved to be an effective deterrent to employment of illegal migrants.

Steps have already been taken to follow up on the Advisory Council's recommendation that a study be launched to determine how to make the SIN system more secure. Our own inquiries suggest that there may be considerable scope for improvement in the linkage between the Unemployment Insurance Commission and the Immigration Commission through the SIN.

Recommendation: Greater efforts should be made to increase the security of the SIN card system, including increased linkage between Immigration and Unemployment Insurance enforcement mechanisms and further steps to reduce the ease of counterfeiting cards.

Illegal workers may be prosecuted under Section 95 of the Immigration Act. In most cases, prosecution does not occur, and the person is removed from the country as quickly as possible. Most respondents saw little value in prosecuting illegal migrants, even when they remain in Canada through discretionary landing.

Recommendation: Consideration should be given to amending the Immigration Act to permit the confiscation of assets and property acquired during illegal residence in Canada, for potential application in extreme cases of blatant abuse.

In practice, prosecutions for harbouring illegal migrants are exceptional. A great deal of discretion must be exercised by enforcement officials in this area and, as far as we have been able to determine, it has been exercised reasonably well.

When illegal migrants are detected, enforcement action should go beyond steps taken for removal from the country. A complete investigation should be undertaken into the entire context of the illegal migrants' presence in the country, including any circumstances of employment. Such inquiries, in themselves, may encourage employers to take greater care in dealing with future applicants for employment.

Recommendation: Task forces should be established in Montreal, Toronto and Vancouver consisting of a Department of Justice prosecutor, an RCMP officer and a senior immigration investigator, all dedicated to the goal of increased investigation and prosecution of employers of illegal migrants. The project should continue for a twelve-month period, with a view to assessing the potential effectiveness of existing employer sanctions, and should be well-publicized for maximum deterrent effect.

C. Broad Directions in Enforcement

The Auditor General's report recently commented on the absence of rationalization in the enforcement area and the need for more clearly defined objectives.

We are of the view that the regional decentralization of the enforcement function has certain features which detract from the clearly defined objectives sought by the Auditor General. For example, the decision to prosecute is frequently left with the RCMP, which appears to operate quite independently in each of the regions. Greater central co-ordination might prove effective not only in achieving uniformity in particular cases but also in pursuing various "scams", unscrupulous consultants and "trafficking" in illegals.

Most respondents strongly favoured greater involvement in enforcement by immigration officers rather than by law enforcement agencies. Some police forces have been subjected to strong criticism for a perceived lack of sensitivity to minority groups.

Recommendation: National headquarters of the Immigration Commission should assume a greater leadership and co-ordinating role in relation to enforcement policy, including preventive measures and the establishment of prosecution priorities.

CHAPTER SEVEN: CANADA'S HUMANITARIAN TRADITION

A. Refugees Abroad

There are an estimated 10 million refugees in various parts of the world today.

Mr. Axworthy has stated publicly on a number of occasions that the most effective contribution which Canada can make to resolving this major problem is through providing assistance abroad rather than through attempting to settle massive numbers of refugees in Canada. At a recent international conference in Washington, D.C., Mr. Axworthy urged fellow ministers responsible for immigration and refugee matters to join together in pressing for a more co-ordinated international response to the problem, as opposed to an ad hoc approach whereby each nation goes its own way.

B. Special Humanitarian Programs

Our immigration laws and procedures also contain sufficient flexibility to respond to special situations in addition to our general reception of refugees abroad. The Minister has used them in such varied situations as the recent earthquake in Italy, the strife in Lebanon and El Salvador and the repression in Poland.

Many respondents to our Issues Paper recognized the need to take measures to curb illegal migration but expressed serious concern that such measures should not be so obtrusive as to interfere with programs reflecting this aspect of Canada's immigration policy.

Recommendation: The Refugee Status Advisory Committee, in consultation with the Immigration Commission and the Department of External Affairs, should provide the Minister with monthly reports as to those countries whose nationals are most eligible for consideration for special programs. (More frequent reports should be provided where escalation of developments occurs.)

C. Refugee Determination Within Canada

Persons who come to Canada may apply for status as Covention refugees. Once an application or "claim" is made, a rather elaborate process of "refugee status determination" comes into play. If the claimant is successful, permanent resident status will normally be granted.

Some of the difficulties surrounding our refugee status determination process were outlined in the report of a task force established by Mr. Axworthy. As a result of this study, a number of changes were made which firmly established the independence of the Refugee Status Advisory Committee and modified the guidelines which it applied. Very recently, the Committee began, for the first time, to provide personal interviews to claimants on a pilot project basis.

The laborious procedure imposed by the Act, together with the dramatic increase in claims, has created serious delays in the disposition of cases. Such delays not only render the system more susceptible to abuse, but also impose increased hardship upon those who have legitimate claims.

Recommendation: Procedures for the determination of refugee status within Canada should be modified by comprehensive legislative amendment to the Immigration Act at the first opportunity.

Due to an anomaly in the existing legislation, it appears that a person may make a refugee claim in Canada only while in illegal status. While arrangements have been made to permit "in-status" claims, many claimants are forced to place themselves in an illegal status in order to be permitted to work while their claims are being processed. Moreover, "in-status" claims carry no right of appeal, so some claimants will go through the entire determination process twice. This has serious repercussions throughout the immigration system, burdening it with unnecessary inquiries and consequent delays.

Recommendation: Immediate legislative amendment should occur through the next Miscellaneous Statute Law Amendment bill to remove the present anomaly with respect to "in-status" refugee claims.

Canada's internal refugee status determination process must be given the capacity to deal effectively with abusive claims. Otherwise, our resources will be squandered in fighting a rearguard action in Canada, when they could be so much more effectively deployed in attacking refugee problems at their source.

CHAPTER EIGHT: THE FAMILY CLASS AND PROCESSING

A central thrust of the C.B.A. submission (supported by a number of other groups and individuals) is that the fundamental problem in relation to illegal migration to Canada is not the question of controls or enforcement but of the selection criteria themselves and the manner in which they are applied.

We did not consider it to be within the scope of our mandate or the time and resources available to us to conduct a review of the application process abroad (and in Canada). Nevertheless, we consider some of the recommendations which were received in relation to the processsing system to be worthy of further consideration by Commission officials.

Recommendation: The comments and suggestions received in relation to the application process should be referred to Commission officials for a report to the Minister, with a view to immediate implementation where feasible.

There appears to be little question that broadening the criteria for the entry of relatives would reduce some of the pressure to enter and remain in Canada illegally. However, the suggestion also raises broad policy issues.

The basic question of establishing the criteria for entry is obviously central to our immigration policy. The scope of the family class and related questions is not a matter on which we discern any clear consensus. Discussion and debate in this area may be delicate because it may attract emotional and even racist response. However, the question is also of obvious concern to many Canadians.

As with the application process, we did not consider a review of the ordinary criteria for admission to Canada to fall within the scope of our mandate, and it was not raised in our Issues Paper. However, in view of the obvious importance of this issue to Canadians, we have published in full the briefs found in Appendices A and BB of this report. We hope that this will generate further public discussion and debate in relation to both sides of this issue.

CHAPTER NINE: CONCLUSION

In conclusion, we can do no better than quote the eloquent summary of one respondent who, we believe, speaks for many Canadians:

> If not for our immigrants, Canada would not exist today. If Canada did not have such a good image as a country of freedom and opportunity, we wouldn't have so many illegals trying to get in any way they can. We must be doing something right to be so popular, but a certain amount of firmness is necessary and more publicity in other countries should be used to discourage and/or prevent further violation of our immigration laws. Meanwhile we must deal with those already within our borders.

CHAPTER ONE

BACKGROUND AND INTRODUCTION

A. The Process

Approximately one year ago, in the early summer of 1982, the Minister of Employment and Immigration, Mr. Axworthy, received expressions of concern from a variety of sources in relation to the problem of illegal migrants in Canada. As a result, he asked the Canada Employment and Immigration Advisory Council "to undertake a study of illegal immigrants in Canada, analyze the origins and extent of the problem, and provide him with suggestions..." The Council held private discussions with a number of groups across Canada and the United States and published its report, entitled "Illegal Immigrants", in December 1982. The report contained a series of recommendations involving significant policy considerations and was the immediate object of widespread public reaction.

The initial public response indicated to Mr. Axworthy the clear need for wider public discussion before a final position was adopted. The Council had consulted a number of individuals and representative bodies, in private meetings. Often these were conducted confidentially, so the full background to some of its observations and conclusions could not be made public. On December 21, 1982, the Minister announced the appointment of Mr. W.G. Robinson of Vancouver as a special advisor to co-ordinate further dialogue and analysis.

In order to provide a focus for public discussion, Mr. Robinson published an "Issues Paper" in February 1983. This document sought to raise questions in relation to the Council's recommendations as well as to introduce other issues on which public response was desirable.

It was widely distributed and has received many favourable comments as a valuable vehicle for consultative purposes by readers both in Canada and abroad. For example, it has been used as a basis for discussion in some of our school classrooms. From an initial printing of 5,000 copies, subsequent demand resulted in the distribution of a total of over 15,000 copies to date.

The decision to seek broad public consultation on the question of illegal migrants has been enthusiastically endorsed by wide public interest and response. Close to 1,000 letters and briefs have been received from individuals, organizations and government bodies from all parts of Canada. The media have played an extremely important role in contributing to the success of the consultative process through an enthusiastic yet moderate and responsible exposition of a potentially highly inflammatory subject.

Mr. Robinson has appeared on a number of television and radio programs, including one lengthy "hot-line show" which was conducted entirely in Chinese (a translator was available). In addition, a number of personal meetings were requested and held in Montreal, Ottawa, Toronto, Winnipeg, Calgary and Vancouver. Members of Parliament, provincial and local government officials, ethnic associations and many individuals responded.

Indeed, one letter was signed by a number of detainees being held in custody by immigration officials. (The letter favoured a general amnesty!)

As a result, Mr. Axworthy extended the consultation period to the end of April, with a view to tabling this report before the Standing Committee on Labour, Manpower and Immigration before the summer recess.

Early in May, the Minister gave the Committee his own reaction to the consultative process which was undertaken by Mr. Robinson:

> He has had a very, very extensive and broad variety of representations, really quite dramatic, I think, in the response of the people. I have seen some of the briefs, some of them are very extensive, very detailed, and that is why we gave it an extra month's extension.[1]

He added:

> The purpose of the report was not just to be tabled for its poetic licence, but to be a basis for action.

Our dialogue with Mr. Axworthy in the final stage of completion of this report has led to steps already having been taken towards implementation of some of the recommendations made here.

The Minister had also commented to the Committee on the quality of many of the responses:

> ...I have been impressed with the thoughtful and balanced comments received from the public on a subject which all Members will agree is most sensitive and volatile.[2]

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1. May 11, 1983
2. May 5, 1983

Admittedly, a few of the responses were simplistic, and a few could be characterized as "racist".[1] However, on the whole, Canadians have responded in a positive manner, seeking to contribute to the solution of a problem which causes them great concern.

It was apparent from many respondents that they truly appreciated the opportunity to express their views on these issues, which were brought to their attention in a variety of ways. For example, one correspondent from Edmonton stated:

> I have read the Issues Paper with a great deal of interest after it was brought to my attention by a reporter from the Edmonton Journal... First of all let me congratulate you and the department you represent for drawing the public into this discussion. The presence of illegal immigrants affects many citizens and not necessarily adversely, and I might add perhaps the majority of the average "Joe" on the street neither is aware of any effect nor is knowledgeable about the situation of the illegal immigrant.

Some expressed surprise that the public would be consulted, as did a correspondent from Vancouver:

> It is a pleasant surprise, as published in the Vancouver Province, March 11, 1983, that you are seeking public comment on one aspect of immigration in Canada, through your special advisor, Mr. W.G. Robinson. (Appendix B)

By far the largest number of responses were received from Vancouver, Edmonton, Calgary, Winnipeg, southern Ontario and Montreal. Government officials in some other parts of the country wrote to the effect that the problem was not significant in their areas.

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[1] Coincidentally, during the course of formulating our final report, it was announced on May 26 that a parliamentary committee would be established to inquire into the subject of racism in Canada.

During the course of our review of the written material on this subject, we noticed the following comment:

> Immigration policy has little appeal for most politicians. While they are not unaware of the disastrous long-run consequences of doing nothing, they see nothing but grief in taking action now.[1]

The events of the last year completely contradict this view, at least in Canada today. The difficult problem of illegal migrants in Canada has been placed in the public domain, and the public has responded in a significant manner. Courses of action are identified in this report, and indeed, action has already been taken on some of them.

B. The International Context

1. General

Even the most perfunctory inquiry into the problem of illegal migrants leads to the firm and accurate conclusion that it is a universal problem. Indeed, the situation in Canada pales in comparison with that in many other countries throughout the world.

According to a recent newspaper report,[2] some thousands of demonstrators marched through Brussels last month to protest against their government's plans to take firmer measures in relation to illegal migrants and to encourage aliens legally in Belgium to return home. Approximately one million foreigners now live in Belgium, including citizens of European Economic Community countries who have easy access to member countries.

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[1] Sylvia Ann Hewlett, "Coping with Illegal Immigrants", Foreign Affairs.

[2] Globe and Mail, May 9, 1983.

Another report described "the vitriolic campaign" related to illegal immigration in that country as one of the "most disturbing developments" in recent elections in France.[1] Yet another referred to the concern in Sweden over "a rising tide of illegal immigrants".[2]

There are estimated to be approximately five million Africans en route to new destinations in Africa. This substantial number of illegal migrants is, in part, a continuing legacy of European-imposed political boundaries which neglected tribal associations and way of life.

A dramatic response was seen in Nigeria on January 17, 1983, when the government issued an order requiring all illegal immigrants to leave the country within two weeks. Hundreds of thousands of Ghanaians were removed. The response was more bloody in the Indian State of Assam, where thousands of Moslem immigrants were massacred by Hindu tribesmen.

There is a continuous movement of illegal migrants from Mainland China to Hong Kong. Unskilled workers from Indonesia are moving illegally to Malaysia, while primarily skilled and semi-skilled Malaysian workers are, in turn, seeking higher wages in Singapore and the Middle East.

Before discussing the perceived causes of illegal migration to Canada, a brief survey is conducted on the current situation in what traditionally

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1. Globe and Mail, March 21, 1983.
2. Globe and Mail, February 22, 1983.

are the larger migrant-receiving countries, all of which have societies similar to our own. The United States, West Germany, France and Australia are examined.

2. The United States

The problem of illegal migrants to the United States gained prominence in the 1970s, leading to the establishment by Congress in 1979 of the Select Commission on Immigration and Refugee Policy. The Attorney General recently adopted a total estimate of between 3.5 and 6 million illegal residents in the United States, with an increase of "perhaps" 500,000 per year.

In 1982, legislation was passed by the Senate to provide a form of general amnesty coupled with increased documentation of workers and, for the first time, severe sanctions for employers who knowingly hire illegal aliens. A similar bill failed in the House of Representatives last December. The legislation received approval in the Senate once more this year, and attempts will again be made to move it through Congress and into law. In addition to the features referred to above, the legislation constitutes the first comprehensive reform of U.S. immigration laws in over 30 years.

A large proportion of the illegal migration to the United States involves Mexican workers and their families who cross the 2,000-mile land border on foot and seek employment opportunities. In spite of efforts by enforcement officers, an estimated two out of three attempted entries are successful, and many who are returned simply try again. The restriction of job opportunities through employer sanctions has been perceived by many as the most effective response to the problem.

3. West Germany

The current situation in Western Europe, generally, has been greatly affected by the "guest worker" program which followed the Second World War. Large numbers of workers from countries such as Turkey, Yugoslavia, Greece, Italy and Portugal met the labour demands of the post-war "boom". By 1973, they represented some 15 per cent of the labour force.

Approximately 4.5 million foreigners (representing 7.5 per cent of the population) currently reside in West Germany. Most of these people have been in Germany for 10 years or longer and have no intention of returning to their home country. As one observer commented: "We asked for workers, but human beings came." Efforts to relocate them in their countries of origin have included lump-sum payments from the West German Government.

The influx of migrants claiming refugee status has created a major problem in Germany. The situation in Canada will be discussed further in Chapter Seven.

No official estimate of illegal residents in West Germany is available. Nevertheless, recent steps taken to increase enforcement suggest a substantial number. Aproximately 25,000 illegals were apprehended in 1981. Enforcement is made considerably easier by universal requirements for identification papers, compulsory registration and the registration of tenants by landlords.

It is government policy to impose mandatory visitor visa requirements on countries whose citizens constitute a high proportion of illegal migrants. The requirement was recently extended to include Ghana, Afghanistan, Sri Lanka, Iran, Nigeria, India, Turkey, Pakistan, Ethiopia and Bangladesh.

The policy is also strongly against consideration of a general amnesty. An example was cited to us where, in 1970, Chancellor Willy Brandt made a vague reference to amnesty in an interview in Turkey. Apparently, the statement received wide circulation, and a sudden and sizeable influx of Turkish citizens into West Germany occurred.

4. France

While the situation in France is similar to West Germany in some respects, there appears to be a major difference in attitude towards amnesty programs. France's regularization of status programs appear to be a recurring phenomenon. Programs of varying nature and size occurred in 1973, 1974, 1976, 1979 and 1980.

In 1981, the new French Government undertook a massive regularization program. The Secretary of State responsible for migrant workers spoke of the government's desire "...to liberate the immigrant population from a precarious and sometimes clandestine way of life."[1] The program became operational in August 1981.

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1. Garson and Moulier, "Clandestine Immigrants and their Regularisation in France, 1981-82", International Labour Office Working Paper.

Approximately 150,000 applications were received. The latest figures available indicate that 126,000 have been accepted and 19,000 rejected. (Some applications are still in process.) A senior government official recently speculated that there are an additional 30,000 to 40,000 illegal residents in France.

5. Australia

Australia offered a very brief amnesty in 1974, to which only 400 applicants responded. In 1976, another amnesty was offered, which attracted some 8,000 applicants of an estimated illegal population of 40,000.

By June 1980, it was estimated that the number of illegal residents following the last amnesty had doubled to approximately 60,000. A regularization of status program (referred to in Australia as ROS) was again adopted, together with steps to deal with prohibited immigrants. In spite of broad criteria, which permitted even persons with a serious criminal record to be approved, less than 12,000 applicants came forward. Approximately 27.6 per cent were from the United Kingdom, 15 per cent from elsewhere in Europe and 34 per cent from Asia.

In spite of changes to the law and the requirement that any future amnesty could be authorized only by legislation, the problem persisted. On September 5, 1982, the Minister for Immigration and Ethnic Affairs announced steps to reduce the substantial number of people living and working in Australia illegally. An estimate was given at the time of 50,000 persons in Australia illegally (of a population of approximately 15 million). The steps announced by the Minister included:

- Initiatives to assist employers in detecting unauthorized workers in their employment.
- Increased prosecution of persons knowingly involved in helping illegals to remain in Australia.
- Increased attention to checking the bona fides of visitors.
- Tighter restrictions on granting permanent resident status following arrival in the country except in compassionate and humanitarian circumstances.

At an international conference in the spring of the following year, the Australian delegate spoke of "...something in the order of 100,000 people who are living in our country in an irregular status." He spoke frankly of the Australian experience with its amnesty programs:

> Generally, I think it fair to say that we would not see amnesties as a continuing solution because the expectation of amnesties themselves encourages future flows. It is very difficult to get over the point that this is the final amnesty and that there will be none further. There seems to be a continuous and continual expectation on the part of people or certain groups illegally, certainly in our country, that there will be yet another amnesty and that their position will be regularized.[1]

Australia receives approximately one million visitors per year.

C. Causes of Illegal Migration to Canada

In our Issues Paper, reference was made to one of the few studies available in relation to persons illegally in Canada. It examined the characteristics of deportable aliens in the Toronto district and found that most were between the ages of 20 and 35, were single and were employed; arrived by air, entered legally and overstayed their lawful visits; were from Jamaica (28 per cent), Guyana (16 per cent) and Portugal (8 per cent), not counting those from the United States. We commented that these figures were, at least, consistent with the view that most illegal immigrants are young, single men and women who enter lawfully as visitors first but overstay to take advantage of better economic opportunities than are available in their countries.

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[1] International Committee for Migration, Sixth Seminar on Adaptation and Integration of Immigrants, Geneva, April 11-15, 1983.

A number of respondents wrote to caution against drawing conclusions from this limited study. Many from British Columbia pointed out that these source countries were inapplicable to their province, where the source of most immigration is the Orient and India. Others suggested that the reason that illegals from the three source countries indicated were apprehended was probably related to their membership in visible minorities, which led to increased attention and investigation. The Issues Paper should have pointed out the limited scope and application of this study.

Some asked why the figure for the United States was excluded. The study found that 116 Americans were deported, or 14 per cent of the total number. However, the figure was not included because deportation orders to the U.S. represent such a small percentage of total visitors from that country. While this forms a significant number of those subjected to enforcement action, the 1981 figures for deportations as an approximate percentage of total visitors are as follows: Guyana (5 per cent); Jamaica (4.5 per cent); Portugal (1.4 per cent); Peru (1.2 per cent); U.S. (0.003 per cent). In the year in question, there were just under 40 million visitors from the U.S. to Canada and just over 2 million visitors from all other countries combined.

The Issues Paper questioned the validity of the Advisory Council's view that family relationships in Canada are a strong force in attracting illegal migrants. As a result of the many representations received from a wide variety of knowledgeable sources, we are of the view that not only economic opportunity but also family relationships are significant in attracting illegal migration to Canada. It was pointed out, for example, that family members are better able to harbour illegals, provide safe employment and make other arrangements which make detection less likely.

However, the rider should be added that this may still beg the question as to whether the primary "pull" factor is the family relationship or the economic opportunity. In many cases, the motivation to migrate may still be, basically, to pursue better economic opportunities. The presence in Canada of a more distantly related relative may well provide an incentive for attempting to enter Canada rather than another country. It might also offer a valid reason for entering as a visitor and an easier transition into employment. However, such a situation should not necessarily be characterized as one involving family re-unification if a close personal relationship does not exist.

In other words, while recognizing that, particularly in some cultures, strong family ties may exist even amongst distant relatives, distant relatives may also be willing to assist in enhancing economic opportunities even when there is no strongly felt familial relationship.

The Issues Paper also asked whether it was likely that many potential immigrants would jeopardize their chances for obtaining legal status in Canada because they are unwilling to attend normal processing procedures, even where these are time-consuming. Once again, a number of respondents confirmed the Council's view. For example, a Toronto lawyer experienced in immigration matters wrote:

> Many illegals have told me that the reason that they came to Canada illegally was because they were not prepared to wait as long as they were told to wait before joining their family members in Canada. Consequently, I do think that there is a correlation between illegal immigration and delays in processing family class sponsorship applications.
>
> ...I always ask the reason for coming to Canada illegally, and often the answer is that the processing times were too lengthy. Of course, many say that they came to Canada for the express purpose of working illegally. (Appendix C)

An analysis of the files of persons who had been accepted under the Australian regularization of status program revealed a surprising 25 per cent who would, by and large, be acceptable under normal selection criteria!

The submission of the Canadian Bar Association offered the most comprehensive analysis of the reasons for illegal migration to Canada which we received. They can be summarized as follows:

(a) The failure of long-term illegal residents to come forward under the 1973 amnesty due to distrust of officials.

(b) The delay in introducing more effective control mechanisms, such as the Social Insurance Number and computers at major airports, following the last amnesty.

(c) The tightening of the assisted relative selection criteria, and the narrowness of their application.

(d) The restricted definition of the family class under the existing regulations.

(e) Delays in overseas processing of applications, and perceived unfairness in refusals.

(f) Unstable political situation in home countries, coupled with some personal ties to Canada.

(g) The prosperity of Canada as a land of economic opportunity relative to the Third World.

(h) Misinformation generated by well-meaning relatives, unscrupulous consultants and lawyers, school recruiters and travel agents abroad.

(i) Long-term residents on temporary status, such as students and domestic workers, who view Canada as their home and are not prepared to leave.

The problem of misinformation, often generated by unscrupulous consultants, was addressed in a discussion paper issued by Mr. Axworthy in April 1981 entitled "The Exploitation of Potential Immigrants by Unscrupulous Consultants". As the paper suggested, there are serious legal and practical limitations on further federal initiatives in this area. One problem is that much of the misinformation is generated abroad. Nevertheless, a number of steps have been taken. A warning paragraph has been inserted in the brochure which is given to potential immigrants at foreign posts. A more detailed leaflet which warns of unscrupulous consultants has also been prepared and distributed in seven languagues. Attempts have also been made to monitor the conduct of some consultants, and discussions have taken place with the RCMP with a view to increased prosecutions where warranted.

The paper suggested that a potentially fruitful area for curbing abuse was the provision of accurate information to the ethnic communities where would-be migrants will often turn for assistance. The Law Society in Ontario has encouraged lawyers specializing in the field of immigration to provide educational programs to ethnic communities in their municipalities. This is now being actively pursued by a number of individual lawyers, as well as groups such as the Canadian Bar Association, the Law Union and community clinics. The C.B.A. submission states that this factor is much less significant today than it was in the early to mid-1970s.

D. The Nature of the Problem

Many Canadians wrote to express their views as to the deleterious effect of illegals on the economy and, particularly, in relation to unemployment, the burden on welfare and the failure to pay taxes. However, in the absence of better evidence, it is far from clear that such adverse consequences do occur. For example, the effect of illegal migrants on unemployment may be minimal, with concentration in menial jobs which many unemployed Canadians would not be prepared to take. While some might avoid the payment of income tax, most income tax is deducted and remitted by employers. The more likely consequence, therefore, is that because of the low wage levels involved and the fear of detection, there would be unclaimed refunds. Similarly, fear of detection would tend to discourage applications for social services.

One adverse consequence might be to encourage lower wage levels and impede improvements in working conditions. On the other hand, the result might be to sustain industries and economic activity which would otherwise disappear.

An American article assessed the impact as involving a redistribution of costs and benefits:

> Those who benefit are employers, consumers and workers in industries related to those where migrants work; U.S. citizens who lose their jobs, or whose wages and working conditions deteriorate, suffer. The victims are likely to be concentrated among groups that are already placed at an economic disadvantage.

In the absence of better information, we do not consider it productive to debate whether illegal migration provides a net benefit or loss to the Canadian economy. The nature of the problem must be assessed on other planes.

The most obvious consequence of illegal migration to Canada is that our carefully established and administered selection criteria are not applied. As a result, the illegal migrant may not have the necessary skills to become established successfully in Canada. Even members of the family class, who need not meet such criteria, must undergo medical examinations. They must also undergo security checks to ensure that they are not criminally-oriented. These requirements are very real protections to Canadian citizens in ensuring that the immigrant will not readily become a burden on our social and health systems, or import a health problem or criminal threat to Canadian society.

However, the greatest negative feature of illegal migration to Canada may be its impact on the integrity of our country. The right and duty to control immigration across a country's borders has been described as a universally recognized and fundamental characteristic of a sovereign state.

Harsh laws and drastic police practices would be necessary to eliminate almost completely the presence of illegal residents in Canada. As another Member of Parliament wrote:

> It is a pipe dream to think that a country like Canada would not attract a certain number of illegal immigrants every year regardless of the strictness of immigration entry regulations. (Appendix D)

However, if a "tolerable limit" is exceeded, our laws will be in danger of losing general public acceptance and respect.

We cannot, as a nation or as individuals, ignore the misery, fear and exploitation which can be generated by the existence of a substantial "underground" population whose members do not have the normal security of knowing they can call on the police if they are in trouble or on the health system if they need medical help.

This aspect of the problem was canvassed in a letter from the Rector of a Toronto church which sponsored meetings to discuss our Issues Paper and the earlier report of the Advisory Council. Apparently, a number of illegal migrants attended the first meeting but were reluctant to pursue the issue at subsequent meetings. The letter stated:

> ...the children of illegal immigrants, no matter how they got here or whether they were born here, they find it difficult to register for school for fear that their parents will be found out and shipped back...; there is a fear of being denounced...by fellow countrymen who know their secret; some of them have been misused by their employers, even though both parties know that what they are doing is illegal; others have, out of naivety, been misused by unscrupulous lawyers who charge them high fees, with promises of shortcuts to legality but who know that nothing can be accomplished...; they also have lost a sense of freedom...to study, to move about, to change jobs or even to attend large parties...

The author acknowledges that all of this would be avoided if they were not here illegally and that some of their former countrymen here legally believe that they should be returned. He added:

> Why they come to Canada is often on the enticement of family members who make promises and have little knowledge of the laws. These people arrive naively and enter into an underground... It leads to lack of value in self, certainly fear, and perhaps a dehumanizing and debilitating experience.

Moreover, the very fact of illegality generates further illegal activity: false identification, forgery, stolen documents and others.

E. Summary

It is apparent that the problem of illegal migration is international in nature and that no country can be completely successful in controlling its flow of immigration. With diminished economic growth in most of the world, there has been a reduced acceptance of legal migrants in traditionally migrant-receiving countries. Yet the same economic situation has increased the desire of many to emigrate. While Canada has some natural protections against massive intrusion, we are likely to continue to face pressures in this area for years to come.

The causes of illegal migration are many and varied. While the pursuit of better economic opportunities is a primary factor, the attraction of family relationships may be at least equally significant. In many cases, the two are combined.

Many observers are of the view that the existing definition of the family class is too narrow. They feel that there is an inevitable tendency for members of the extended family to join those who are currently here, illegally if necessary. Difficulties and delays in processing applications abroad are perceived as encouraging the tendency to enter Canada illegally.

The issue of the appropriate scope of the family class definition is one which raises the broad policy question as to what our selection criteria for immigrants should be. However, we have considered this basic question to be beyond the scope of our mandate as well as the time frame available to us. It was not raised in the Issues Paper and received detailed treatment from a very limited number of respondents. Nor have we examined the matter of difficulties and delays in the processing of applications abroad. The matter was studied by a task force and a number of modifications were implemented. Nevertheless, important observations and recommendations have been offered to us, and we discuss these in more detail in Chapter Eight. We are also making available for further public comment and discussion some of the detailed submissions we have received.

The content of this report essentially relates to the following questions:

- What is the actual number of illegal migrants in Canada today?
- Should they be granted a general amnesty, or some form of conditional amnesty?
- How effective are the existing mechanisms for the discretionary landing of long-term illegals, and what changes, if any, should be made?
- What steps should be taken to provide more effective control of entry into Canada at our borders?

- What steps should be taken to provide more effective, yet acceptable, enforcement of our laws against those who do succeed in entering Canada illegally?
- What response should Canada give to refugees and others subjected to persecution throughout the world?

These questions are dealt with, in turn, in the chapters which follow.

CHAPTER TWO

SCOPE OF THE PROBLEM: NUMBERS

A. Background

The report of the Advisory Council made the following comment in relation to the size of the illegal migrant population in Canada:

> In quantitative terms, it is difficult to be accurate. The Council explored a number of ways in which the volume of illegal immigrants could be estimated. Upon close scrutiny, all of these, however, proved to be highly unreliable because of a lack of precise data. The estimates given to the Council during its interviews across the country seemed to indicate that the number 200,000 quoted in the past is not unreasonable and may be even lower than the actual number.

This figure was based on estimates provided by a wide range of individuals and groups involved in the immigration field, who were consulted by the Council.

The Immigration Commission was unable to provide any estimate at the time, so the Council's figure was only as accurate as the perceptions of those who were consulted. The Council observed that the difficulty in finding an accurate estimate was, in itself, an indication of lack of control on the part of the Commission.

The figure of 200,000 illegal migrants is identical to that adopted by the Minister responsible for Immigration in 1973 as the maximum number expected to come forward under the general amnesty program known as "Project 97". However, the 1973 amnesty produced only some 15,000 to 18,000 illegal immigrants. In view of the vast publicity given to this amnesty, subsequent tightening of controls and the difficulty of avoiding detection under current economic conditions, the figure of 200,000 appears to be excessive today.

The responses to our Issues Paper did not provide much assistance in ascertaining a more precise estimate. Nevertheless, a number of respondents shared the view that many did not come forward under the 1973 program. It was felt that the 90-day period was insufficient to establish the necessary trust between potential applicants and government officials. This view is not supported by enforcement experience, which indicates that persons who would have been eligible for the 1973 amnesty are now apprehended only rarely. In any event, the widespread perception was that the Council's estimate of 200,000 illegal migrants in Canada today was too high.

B. Recent Studies

The difficulty and, indeed, impossibility of obtaining an accurate estimate of the illegal population is obvious since it is an attempt to count the unknown. Once illegal migrants are known, they are subjected to enforcement procedures and are no longer a part of the problem.

Nevertheless, with modern statistical techniques, it should be possible to conduct inferential studies which would provide more solid footing for exploring the problem of illegal migration in Canada. Since this process was initiated by Mr. Axworthy, a number of initiatives in this direction have occurred.

Statistics Canada has launched a study to estimate the number of illegal residents who came to Canada during the last decade. The study, using 1971 and 1981 Census data by country of birth, will attempt to estimate the volume of illegal immigration to Canada during the period by taking into account deaths and emigration as well as the annual figures of documented immigration. The results are not likely to be available until well into 1984.

A recent study was also conducted by the ministère des Communautés culturelles et de l'Immigration entitled Les Immigrants Illégaux au Québec. The study estimated the figure of illegal migrants in Quebec to be between 5,000 and 10,000.

The Canada Employment and Immigration Commission has now completed a study of enforcement cases at the Vancouver, Toronto and Montreal Immigration Centres. Using two different approaches to the available data, estimates of 46,604 on January 1, 1983, and 54,931 on October 1, 1982, were achieved. These figures represent "upper limit" estimates based on a very broad definition of illegal status. The generosity of the estimates is reflected in the figure for Quebec (14,671), which is considerably higher than the figures referred to earlier in the Quebec study.

These studies are not highly sophisticated and are founded on a number of assumptions. Nevertheless, these assumptions are clearly identified. There may be some shortcomings in data and methodology due to the limited time available for completing the study. However, we consider them to be the best estimates available to date. Therefore, in light of the 1973 amnesty and subsequent events, the general reaction to the Council's estimate and the most recent studies, we would estimate the upper limit of the illegal resident population in Canada to be approximately 50,000.

This figure should not be accepted as definitive. Rather, it should serve as the starting point for continual and increasingly improved monitoring and forecasting of the illegal population in Canada.

In this connection, we believe it to be extremely important that the Commission make available, at the first opportunity, the details of its studies. While sensitive information may be involved and the studies may be subject to criticism for real and perceived shortcomings, the end result is bound to be beneficial. There are many in the immigration field and in the academic field who are skilled, knowledgeable and keenly interested in immigration issues. Their critical comments and suggestions will be valuable in a continuing process of refining techniques to reach an accurate estimate. Moreover, members of the general public should be as fully informed as possible to avoid misapprehension.

Recommendation: The figure of 50,000 should be accepted as a "working figure" for the estimate of the maximum number of illegal migrants in Canada at the present time.

Recommendation: The Immigration Commission should make public its current studies estimating the number of illegal migrants in Canada. The involvement of knowledgeable members of the public and of the academic community should be encouraged, with a view to generating independent studies.

Recommendation: A revision of the Commission's "working figure" should be published at least every three years in the Annual Report to Parliament on Immigration Levels, together with a description of steps being taken to deal with the problem.

Supporting studies and data should be made freely available to members of the public, and the involvement of academics and others knowledgeable in immigration matters in estimating numbers should be encouraged. The three-year maximum period for revising the Commission's "working figure" will allow the development and improvement of methodology as well as the accumulation of information while ensuring that progress does, indeed, occur.

The Commission's studies also provided some further insights into the "profile" of illegal migrants in Canada. As suggested by many of our respondents, the study of deportable aliens in Toronto, which was referred to in the Issues Paper, does not reflect the national picture.

The Commission's studies indicate that the nationalities most frequently apprehended in Toronto were from the Caribbean - Jamaicans, Trinidadians and Guyanese. However, in Vancouver, the two groups most frequently encountered were Americans and Indians. On a national scale (based on the studies of the three centres of Vancouver, Toronto and Montreal), the most frequently encountered nationalities subjected to enforcement proceedings were as follows: Jamaican (25.9 per cent), American (16.0 per cent), Indian (11.2 per cent), Guyanese (7.1 per cent) and Portugese (5.3 per cent).

A number of other features of illegal migrants were also revealed:

- 41 per cent of the sample population were females and 59 per cent males, which suggests a higher number of females than tend to be expected from popular impression.
- Most tend to be unmarried (75 per cent) and between the ages of 18 and 34 (84 per cent).
- Only 8 per cent had accompanying dependants, and only 1 per cent had children in the school system.
- 47.5 per cent had relatives in Canada (confirming the view expressed to us by many of our respondents and discussed earlier).
- 55 per cent were working without authorization or admitted that they had done so.
- 35 per cent of the survey sample had obtained a Social Insurance Number (SIN) card or had quoted a fictitious SIN in order to obtain employment. 17.3 per cent had applied for and obtained a SIN card through regular channels; 11.8 per cent had borrowed and 2.7 per cent had stolen SIN cards from others; 1.3 per cent were in possession of fraudulent SIN cards. (It should be pointed out that while no record of SIN usage was available in 63.3 per cent of the cases, it is possible that this merely means that the relevant information was not recorded in the files which were examined.)
- In none of the cases surveyed was there any indication that the individual concerned had ever received any form of social assistance. However, 17 per cent had valid registration under provincial medical insurance plans. A further 10 per cent were in possession of fraudulently obtained health insurance.

Once again, caution should be exercised in drawing too many inferences from these figures. At the same time, it is important that better information be gathered on a continuing basis not only of the size but also of the characteristics of our illegal migrant population. It is only from an adequate information base that appropriate responses can be developed. Once more, the publication of the Commission's studies should provoke greater interest and discussion. Critical analysis and independent studies should be encouraged.

C. Conclusion

The estimate of a maximum of 50,000 illegal migrants in Canada is lower than others which have been made. We do not believe that the problem of illegal migrants in Canada is of crisis proportions.

Nevertheless, we share the view of the Advisory Council and most of those who responded to us that it is a significant problem warranting an immediate and co-ordinated response as well as increased attention on a continuing basis.

Immigration has always played an important part in Canadian history and public policy. By and large our immigration policy could be characterized as generous and open, and it has served us well.

Any country which has relied so heavily upon immigrants is bound to experience a certain level of illegal migration. During difficult economic times, negative consequences and resentment on the part of citizens may occur.

However, it appears that Canada has not experienced the degree of seriousness of illegal immigration which other immigrant-receiving countries have. We have some natural allies. The three oceans which frame our country limit access to many who might otherwise be tempted to enter. While our great land border to the south could create difficult problems of control, for climatic and other reasons, the flow of illegal migration has tended to be greater in the opposite direction.

However, that is not to say that we should be complacent. The pressure of illegal migration may well increase world-wide, and we will not be immune. We are of the view that illegal migration to Canada is not of crisis proportions at the present time. Nevertheless, there is some general recognition that it is a significant problem which should be addressed. Now is an appropriate time for preventive and corrective action.

CHAPTER THREE

GENERAL AMNESTY

A. Conditional Settlement Program

The Advisory Council rejected a "blanket, unconditional amnesty" for Canada. However, based upon the estimates which it received of an illegal population of some 200,000, it recommended a "Conditional Settlement Program":

> ...whereby persons in Canada without legal status on or before July 1, 1982 be granted temporary resident status for a probationary period of six years before the granting of landed immigrant status. These persons would have to come forward voluntarily and meet certain basic criteria.

While the Council felt that the status of those illegally in Canada should be regularized, it also sought to convey a clear message through the imposition of conditions which:

> ...must be sufficiently arduous to ensure that there is no question in anyone's mind that those participating in the program have broken the law and must suffer some sort of penalty before being accepted as permanent residents in Canada.

The six-year probationary period was the essential feature distinguishing the Council's proposal from a general amnesty.

The Issues Paper perceived a number of difficulties associated with this proposal. They are repeated below:

i) Some would consider it to be vindictive in punishing all those who come forward regardless of the merits of particular cases related to humanitarian and compassionate grounds. This period even exceeds the period of time prescribed in the Act (a minimum of five years) for assessing the rehabilitation of a person who has bee convicted of a criminal offence.

ii) The resource implications and administrative problems of keeping track of large numbers and monitoring compliance with conditions over a six year period are significant.

iii) Would all breaches result in removal? When would family members of probationers be permitted to enter Canada? It would be difficult to contemplate removing a probationer after up to six years of authorized residence in Canada during which some children may have been born here and others may have attended up to six grades of schooling.

iv) Moreover, with such a lengthy probationary period, would many illegals come forward?

Even prior to publication of the Issues Paper, many public commentators, including a former Minister of Immigration, characterized the proposal as simply a general amnesty.

Many of our respondents shared these concerns, and the few who supported the proposal recommended a much shorter probationary period (as well as a later cut-off date for eligibility). Generally, the representations which we received tended to fall within the categories of either support for a general amnesty or its rejection.

The Council might not have found it necessary to recommend its Conditional Settlement Program had it had available, at the time, the more recent studies in relation to the size of the illegal population in Canada. While the proposal is an innovative attempt to grant relief without being seen to condone the transgression, we are of the view that it does not provide an appropriate response to the present situation in all circumstances.

B. "Project 97"

Any discussion of the prospect of a general amnesty for Canada must be framed in the context of our general amnesty of 1973. "Project 97" was generally regarded as a highly successful operation, and, in large part, that was attributable to broad public support reflected in an unusually high degree of co-operation on the part of all political parties. This is attributable to a variety of factors which existed at the time, including the following:

(a) The entry of immigrants was, simply, "out of control". The decision in 1967 to permit visitors to apply for landing within Canada and, if denied, to invoke broad grounds of appeal, led to a breakdown of the system. The backlog before the Immigration Appeal Board was hopeless, with delays of years, which allowed appellants to accumulate compassionate and humanitarian grounds as jobs and residences were established, children were born and other roots were grown. Visitors were arriving by the thousands in order to take advantage of the situation. In short, there was a crisis.

(b) The response to the crisis was to make a major change in the law. But it was necessary to provide for those who had already come to Canada relying upon the old law. In the words of the Minister of Immigration at the time, the law had to be changed "... but I think decency demands that it be done fairly."

(c) It was also emphasized and clearly understood that the amnesty was unique. It would not be repeated. Again, in the words of the Minister:

> This is a wide-open invitation to those who have lived in Canada since 30 November, 1972 to come forward and apply for adjustment of their status. But it is also a last chance... In plain language, Mr. Speaker, the choice facing all those eligible for adjustment of status is this: either to come forward...or to remain underground for the rest of their lives in Canada running the constant risk of detection or deportation.

The present situation is considerably different from that which preceded the decision to grant an amnesty in 1973.

There is no major revision contemplated of the immigration laws and regulations as there was in 1973. Nor is there a visible crisis of the proportions which existed at that time. While there are continuing difficulties and delays in processing, the system cannot be characterized as facing the imminent collapse which was present in 1973. Moreover, the last estimates available suggest that the illegal population is a fraction of that which formed the premise for the 1973 general amnesty. Perhaps most significantly, there is a total absence of broad public support for a general amnesty program at the present time.

C. Public Response

The Advisory Council stated that it was:

> ...reluctant to recommend a blanket, unconditional amnesty similar to those attempted in the past. The Council estimates that this approach only perpetuates the problem and encourages aliens to enter the country illegally in the hope that a new amnesty will soon be declared.

Apart from a number of form letters from one community, the number of representations favouring a general amnesty was very limited. The C.B.A. submission did include a proposal for a regularization program from the Law Union of Ontario. However, the C.B.A. submission fell short of endorsing that proposal or any other form of general amnesty. Based on our public consultations, we are of the view that present public opinion clearly does not favour a general amnesty in Canada.

We quote below from some of the many letters which we received in order to convey the strongly felt opposition which many Canadians have to any such proposal:

> Why should illegal immigrants be allowed to attain citizenship in Canada? What about the immigrants who play by the rules? Is it fair to them to have a bunch of cheaters suddenly jump ahead of them in line? What about our system by which we determine who is a suitable immigrant and who is not? Is that system not rendered meaningless by wholesale amnesty to cheaters? (Appendix E)
>
> I have a sister and brothers in Scotland who could not receive even preliminary consideration at Canadian immigration recently, although they are educated to "O" level standard. The utter bankruptcy of such an amnesty only leads me to tell my family to abandon the straightforward, honest way of trying to come to Canada - those who take the illegal route obviously fare much better. (Appendix F)
>
> When I immigrated to Canada from India fourteen years ago, I waited for nearly three years before my papers were finalized... I realize that the illegal immigrants are already here, but granting legal status, amnesty or whatever you want to call it only encourages others to do the same and leaves honest people out.
>
> I am disturbed that, once again, this country is considering breaking its own rule regarding the correct and legal way for people to seek permanent residence here. The granting of amnesty to those who chose to avoid the legal route will be a slap in the face to those many hundreds of thousands from all over the world who have applied through proper channels to come to this country and especially to those who, for whatever reason, were turned down as immigrants.
>
> I think granting amnesty will also produce gross discrimination. Decent, law-abiding, qualified persons seeking entry into Canada will fail because of the current employment situation, while unqualified rascals will sneak through, taking jobs from Canadians.

This view was also expressed by a Member of Parliament who wrote:

> I have grave misgivings concerning the proposed amnesty for illegal immigrants and feel that such a step would be greeted with dismay by the thousands of people in my Riding who patiently waited their turn to come to Canada in the first place. I am also concerned that an amnesty could provide a signal for countless other nationals to "try their luck", thereby making a mockery of the selection criteria. (Appendix G)

Officials in the immigration sections of our posts abroad reported that a possible amnesty was "very big news" in many parts of the world. In Hong Kong, India and the Philippines, the press stories announced that an amnesty had actually been introduced. What appears to have been a direct result was an increase in visitor traffic to Canada from those posts at a time of year when requests for visitor visas are usually down.

The impact has also been observed in Canada:

> The present public debate over an amnesty appears to have created a temporary increase in the number of illegals entering Canada. The Immigration Collective of the Law Union of Ontario feel that there should be immediate action by the Immigration Commission to respond to this in order to settle the issue. Delay only raises expectations further and increases the number attempting to remain in Canada without status. (Appendix A, p. 22)

D. Rejection of General Amnesty

On June 2, 1983, Mr. Axworthy stated publicly in the House of Commons that he rejected a general amnesty in Canada as a solution to the problem of illegal migrants in Canada. At the same time, he announced that our report would be tabled before the Standing Committee on Labour, Manpower and Immigration at the end of June, and would provide further elaboration. Opposition immigration critics, Mr. John McDermid, M.P. (Progressive Conservative), and Mr. Dan Heap, M.P. (New Democrat), publicly expressed their support for this decision.

The reasons for rejecting a program of general amnesty may be summarized as follows:

(a) It would be a subversion of the "selection" process for immigration to Canada. Priorities would be set not by family ties in Canada, by the ability to adapt successfully to life in Canada, or by inclusion in special humanitarian programs, but rather by illegal presence in the country. The criteria for immigration which are established by our laws would become less significant. Moreover, there would be a "ripple" effect. Once illegal immigrants are granted entry, they then have the right to sponsor relatives for entry as well. Indeed, some observers feel that the amnesty of 1973 was largely responsible for current processing line-ups abroad as all those landed in relation to "Project 97" soon took steps to bring over relatives.

(b) It would discriminate unfairly against those who apply in accordance with the law. The letters referred to earlier, and a great many more, stressed the sense of injustice which is felt when many are seen waiting patiently in line or accepting a negative decision while others, who remain in violation of the law, are rewarded.

(c) It would create expectations of further amnesties in future and act as a magnet in attracting even more illegal migrants. This phenomenon now seems to have gained general recognition and was accepted at a recent international conference of nations, intergovernmental bodies and non-governmental organizations.[1]

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[1] Intergovernmental Committee for Migration, Conclusion Number Six, Sixth Seminar on Adaptation and Integration of Immigrants, Geneva, April 11-15, 1983.

This magnet effect seems to operate even when amnesties are coupled with attempts to tighten controls.

(d) Quite apart from the subversion of our selection process, the integrity and credibility of our immigration system would be further diminished by retreating from the government's strong policy statement less than 10 years ago, which rejected future amnesties. As stated in the Issues Paper, if Canada were to grant another general amnesty and to say, again, that this would be the last one, would anyone believe us?

(e) Experience with amnesties in other countries has also uncovered other negative features of amnesties:

(i) Some have failed to bring forward in significant numbers the long-term overstayers, while they have regularized the status of many who entered during the previous 12 to 18 months.

(ii) Many illegal migrants seek to qualify by back-dating their time of arrival. Proof of time of arrival is difficult and time-consuming, particularly when "evidence" is produced but is of a dubious nature.

While the Minister's statement rejecting a general amnesty was timely and appropriate, it is a message which bears repeating regularly. It was established as government policy at the time of the last general amnesty that no such amnesty would be adopted in future. That is still government policy, and Canada should be and should be seen to be absolutely unequivocal on this issue.

Recommendation: The Minister of Employment and Immigration and other representatives of Canada should emphasize that it is government policy not to adopt programs of general amnesty in future. This message should also be included in literature abroad which describes our immigration programs.

CHAPTER FOUR

"CASE-BY-CASE" DISCRETION

A. The Exercise of Discretion in our Immigration Law

The current scheme of the Immigration Act and Regulations is to express the law in strict and rigid terms but to repose a broad discretionary power in the Minister to make exceptions in appropriate cases. The central provision authorizing the exercise of ministerial discretion is Section 37(1) which, subject to certain exceptions, provides that:

> The Minister may issue a written permit authorizing any person to come into or remain in Canada...

This provision grants the Minister legal authority to exercise a discretion which overrides the ordinary application of the laws and regulations which would otherwise operate to exclude an individual from Canada.

The granting of a broad discretionary power can be viewed as a useful device to temper the rigidity of written rules, which can never envision all of the circumstances which may arise. On the other hand, it may be viewed as the very antithesis of the principle of the rule of law, with the potential for unbridled arbitrariness. A regime which recognizes no rights in law but only permits privileges to be granted through the generosity of its officials does not conform to the principle of the rule of law. But a regime whose legal rules are so detailed and inflexible that they produce frequent anomalies and inequities will soon lose the respect of its citizens, which is the very foundation for the continued existence of the rule of law.

Obviously, then, a balance must be struck. The Immigration Act recognizes that there may be a need for the Minister to temper the strict application of that Act and its Regulations with individual judgment in specific cases. Moreover, while Parliament must have intended that such judgments would form the exception rather than the rule, the Act also seems to recognize that they would occur in significant numbers. Section 123, with certain exceptions, provides that:

> The Minister...may authorize such persons employed in the public service of Canada as he deems proper to exercise and perform any of the powers, duties and functions that may or are required to be exercised or performed by him under this Act...

In fact there has been extensive delegation of the power authorized by Section 37(1). Therefore, a discussion of the exercise of ministerial discretion must consider two distinct situations. The first encompasses the issue of permits by government officials as delegates of the Minister. The vast majority of permits issued fall within this situation. The second involves those relatively few cases where the Minister responds to a request for personal intervention in a particular case.

An attempt was made in the late 1960s to reduce significantly the role of the Minister in individual cases by granting discretionary powers to the Immigration Appeal Board. This approach was criticized in Parliament by the

Member for Greenwood, Mr. Andrew Brewin, in 1973. While not advocating the removal of the I.A.B.'s jurisdiction to consider compassionate grounds, he stated:

> I believe the system worked better when the Minister had a concurrent power which he exercised by the granting of permits, usually on the advice of responsible Ministers and sometimes on representations made directly to them. This system was more expeditious and in some of these cases which are basically political, the responsibility should properly be that of the Minister...I believe it would be more appropriately exercised by a Minister responsible to Parliament than by a court of law. I speak without any disrespect for the courts of law, but on the basis of having had some experience in this particular field.
> (Deb., June 20, 1973, p. 4960)

In fact, the attempt to exercise these discretionary powers in a quasi-judicial forum contributed directly to the virtual breakdown of our system at the time, and led to the general amnesty.

When the new legislation was developed, a conscious decision was taken to limit the jurisdiction of adjudicators. No discretion is permitted, even where infractions may be viewed as extremely insignificant. As a result, the discretion was reserved for the administrative sphere, on "humanitarian" and related grounds, and was implemented by means of ministerial permits.

Prior to the introduction of the new legislation, the Member for Peace River, Mr. Baldwin, recommended the establishment of a small standing committee to deal with immigration matters and review immigration regulations. He spoke of the role of Members:

> ...as ombudsmen in respect of people who have immigration problems. The House and its Members are better qualified than anybody else to deal with the problem of immigration...
> (Deb., July 19, 1973, p. 5817)

A similar view was expressed by the Honourable Robert Andras, when he was Minister of Manpower and Immigration. His comments were apparently made in response to an editorial comment which suggested some impropriety in the granting of permits as a result of representations by Members of Parliament:

> ...a great number of Members of Parliament do this, and most certainly when I did not have this portofilio and was a back-bencher I did it. I think this is a totally legitimate role for a Member of Parliament to be, as it were, an ombudsman for people who have difficulty...

The Member for Hamilton West, Mr. Alexander, was quick to express his concurrence with this view (even though he estimated that his representations to the Minister were 95 per cent unsuccessful).

The following figures reflect the number of permits issued in each year since 1970:

1970: 485
1971: 642
1972: 723
1973: 4,392
1974: 17,445
1975: 11,420
1976: 11,420
1977: 10,555
1978: 16,698
1979: 9,104
1980: 11,307
1981: 13,947
1982: 12,296

It is a central feature of our legislation that authorization to obtain permanent residence must be given abroad. Each exception must be authorized by a specific Order-in-Council. The figures for landings in Canada by this means are as follows:

1979: 13,491
1980: 13,719
1981: 17,163
1982: 18,941

While these figures may seem high, it should be borne in mind that they are largely composed of persons landed under special programs. For example, Polish visitors in Canada at the time martial law was declared in Poland were permitted to be landed here rather than being required to leave and apply abroad.

The vast majority of these decisions to avoid the harsh consequences of our immigration laws are made by officials as "delegates" of the Minister under "guidelines" established by the Immigration Commission. Many cases are not difficult. A student whose visa expires on a Friday and fails to keep an appointment to arrange renewal due to an illness is subject to deportation when he or she reports the following Monday. Few Canadians would support the strict application of the law in such a situation.

However, the decision is not always easy, and the more difficult it is, the more likely it is that the file will end up on the Minister's desk for a personal review. The nature of the Minister's role in this connection was articulated by Mr. Axworthy not long after he assumed the Immigration portfolio. While the following passages are lengthy, we are of the view that they may assist the public in gaining a better appreciation of the nature of the decision-making which occurs:

> It goes back to the point I made earlier in my remarks - that certain cases hit the headlines because they have a sensational quality, they strike the imagination or because a confrontation occurs. Decisions have to be taken on these cases all the time. Unfortunately, I deal only with the rough cases. The easier cases are handled further down the line and the tough ones are passed up quickly. Discretion must be employed in most of the immigration categories because one is dealing with personalities. Immigration is not a matter of rubber-stamping something from a machine. It involves people with different histories, backgrounds, needs, and requirements and discretion must be applied.

> There is no one in this Chamber who would rather have the situation another way than me because I am the one who ends up making the decision. As I have discovered, there is no such thing as a totally happy decision; it tends to cut both ways, but these judgments must be made. One of the reasons we are in this Chamber is that we have been elected to make such decisions. Public servants should not be called upon to take the tough decisions because they are not accountable; the decision cannot be made by a computer because it is not a mechanical function. We will always be judged on the basis on which we take our decisions because they are matters of human behaviour, and must be judged by people who apply some sense of standards.
>
> Our judgments will differ. I guess that over a period of time the shadings of decisions made by Members opposite would be different from those made by Members on this side because of our different philosophies. One philosophy is Liberal and the other philosophy is Conservative. Each side feels strongly about its philosophy, and that would dictate a certain different range of decisions.
>
> Rarely is there a clear-cut answer to any immigration case. There are reasonable arguments on both sides and that is why we must spend time assessing the facts going over the information. Immigration sometimes slows down in its procedures, because it takes so long to gather all the documentation together and talk to the people involved...
>
> Since taking over this Ministry I have had the opportunity to look at some of the past cases of my predecessor from the Conservative Party. He was faced with equally tough and controversial decisions. I can recall feeling some sympathy for my predecessor while watching him on television during the last election as he was being barricaded in his constituency office by a group of people who did not like his decision in one particular case. In this area, one is called upon to make Solomon-like judgments which turn out to be not so Solomon-like, but one can only do one's best.
> (Deb. Dec. 5, 1980, p. 5422)

As the following comments from the Member for Saskatoon East, Father Ogle, indicate, the burden of this role is also appreciated:

> I appreciate the difficulties which the Honourable Minister must encounter many times when he is confronted with the problem of refugees in the world today. I am sure he must be torn between what his heart would like to do and what the law says he must do. I do not know how the Minister is able to handle the situation. It must be a very difficult tension under which to live.
>
> In past months I have dealt with the Minister in various difficult refugee situations and I know he has found ways to handle many of

> them. I thank him for changing with the stroke of a pen the futures of persons, families and generations of a family. It is a very difficult power with which he lives and I thank him for addressing these most difficult questions.
> (Ibid., p. 5432)

A few days later, Mr. Axworthy added the following comments:

> The particular case the Member cited was not in itself unique. A number of similar cases are being judged all the time. It is just that that one had a highly emotive quality and I would suggest some political quality to it as well, caused by some of his friends and colleagues. As I have said before, I do not pretend to be infallible. Sometimes we will make mistakes in judgment. If I err, I try to err with some degree of compassion, and I think I have tried to treat some Members and their cases in that way.
> (Deb., Dec. 8, 1980, p. 5496)
>
> I said in the House on Friday that the administration of the immigration law is very much made of human judgments. It cannot be bureaucratized. It cannot be regularized. It is something which requires an individual to make choices. Sometimes they are tough choices, and I want to thank the Honourable Member for the assistance he has provided me in many cases by bringing information and wisdom to many of the more difficult judgments we have had to make.
> (Ibid., p. 5511)

There are both positive and negative features to direct ministerial involvement in the exercise of discretion in specific cases.

The exercise of this discretionary power by the Minister may have useful repercussions throughout the administration of our immigration law and policy. It can serve as a check upon potential arbitrariness in the exercise of discretion by officials. The value of this function has been expressed to us by a senior and experienced official who recognized the need for ultimate political accountability in this area of decision-making. The exercise of this power can also provide informal guidance to officials in dealing with future cases and, more formally, in the revision of our immigration guidelines.

However, there are also a number of potential dangers associated with the exercise of discretion by the Minister in specific cases. By considering cases in isolation, the Minister may not be aware of a potential "ripple" effect on other similar cases. Serious inroads may be made on general enforcement if individual cases are decided without regard for a great number of identical cases which are being treated differently. Expectations which cannot realistically be met might be created amongst other applicants.

There is also the danger that the public will come to view immigration decision-making as being significantly dependent on "whom you know" rather than on individual merit. If public reaction is too influential upon decision-making, applicants may come to view a successful public relations campaign as the route to a successful determination of a case.

If too many cases come directly to the Minister, he will have to rely, to a considerable degree, upon members of his staff, who may not always be in the best position to balance enforcement concerns. Special care must be taken to ensure that the personal imprint of the Minister is, indeed, present in the adjudication of cases which come to his office.

In all of this, the Minister must not lose sight of the impact of these decisions on the officials who had been involved in the specific cases at their earlier stages. Discretionary decision-making by officials is, generally, taken very seriously although enforcement considerations may tend to be predominant. The morale of officials can be affected if the reversal of their decisions is not understood by them.

While the foregoing discussion has been lengthy and may appear to be of a very general nature, our consultative process has led us to the conclusion that the exercise of discretion under present immigration law and practice is not well-understood. If Canadians are to have confidence in the immigration system, it is important that they understand it. After all, it is their system, and they have the ultimate power to change it. Our consultative process revealed a tremendous interest in this subject and also some lack of understanding, generally, of our laws and how they are applied.

B. "Case-by-Case" Discretion in Relation to Illegal Migrants

1. The Need for "Case-by-Case" Discretion

While illegal migrants in Canada must ordinarily be subjected to regular enforcement procedures, there are specific cases where exceptional treatment is warranted. This approach is well-established under our existing laws and was generally accepted as desirable by those respondents who specifically commented on it.

The following letter from a group in Orillia, Ontario, is illustrative:

> Although we do not feel a general amnesty or even a conditional amnesty...would be in the best interest of all concerned we do feel that an extension of policy as outlined in I.S. 1.39 would be very effective. This would in effect set up some controls for qualifying for getting landed status; while at the same time eliminate those

> who obviously have manipulated the system for their own benefit, and who would not qualify except for the controls of time, and a clear police record. (Appendix H)

The significant difference between an amnesty and discretionary consideration of specific cases is that an amnesty treats a broad range of cases indiscriminately. "Case-by-case" discretion isolates those specific situations which, on their merits, warrant exceptional treatment. The degree of general acceptance of such an approach was graphically illustrated in a letter from one woman who urged, in the strongest possible terms, the strict enforcement of immigration laws while, at the same time, she condemned enforcement officials for attempting to deport a neighbour who had been residing in Canada illegally for a number of years but who was obviously well-established and integrated into Canadian society.

The issue is not merely one of compassion, although the alleviation of misery and fear is obviously desirable. The integrity of our immigration system is also adversely affected where anomalies are created; for example, where a child was born in Canada and the entire family is deported even though the child might return upon reaching the age of 18 and sponsor the immigration of the family.[1]

The integrity of our country is also diminished through the long-term build-up of a population of totally established and integrated residents who are without legal status. In spite of the best control and enforcement methods, there will always be some illegal migrants in Canada, and of that number there will always be a fraction who should be considered for exceptional treatment.

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[1] One respondent argued that Canada is obliged by international law not to deport in this situation. (Appendix I)

From the perspective of compassion, it should be kept in mind that not all illegal migrants are calculating manipulators of our country. Some were motivated by strong family ties and personal circumstances. Some may be accurately viewed as victims enticed by unscrupulous "consultants", travel agents abroad or even well-meaning but ignorant relatives and friends.

2. The Features of an Effective Process

We are of the view that the mechanism for case-by-case discretion to permit the landing of illegal migrants must remain outside the judicial or quasi-judicial process. Many of the general comments made at the beginning of this chapter are applicable here. The decision requires the kind of judgment which renders it best left in the administrative sphere, with ultimate political accountability. Moreover, introduction into the judicial stream, with related reviews and appeals, could seriously hamper enforcement.

It is important that the criteria for landing be sufficiently unique to distinguish these cases from all other enforcement cases. In particular, it is desirable that there be a sufficiently long de facto residence requirement that the process does not act as a magnet to persons abroad who might enter with the specific object of gaining status by this device.

As another deterrent to persons who might be tempted to enter in this way, it has been suggested that persons granted discretionary landing as illegal residents be limited in sponsorship when they are permanent residents. For example, they might be restricted to sponsoring spouses and dependant children. While this suggestion may have implications in terms of creating two classes of permanent residents, it was not raised in the Issues Paper and warrants further discussion before a recommendation can be made.

The criteria must also be sufficiently clear to ensure an acceptable degree of uniformity, consistency and fairness. The manner of application is no less important than the actual criteria in this connection.

The process must generate sufficient confidence that those eligible will come forward. Many respondents spoke of the inherent fear and distrust amongst illegal migrants. Perhaps that is inevitable, but it must be taken into account in establishing procedures. For example, the opportunity to apply anonymously has been suggested.

Finally, there must be some incentive to apply even at the risk of a negative determination. Some form of differential treatment should be provided to those who come forward voluntarily but are rejected, as opposed to those who are detected through regular enforcement action.

In sum, this process must balance the need for sensitivity to specific cases against the integrity of the selection system and enforcement. Compassion must be exercised without bringing the administration of the law into disrepute. A balance must be found in the context of the elusive standard of community tolerance.

3. The Existing Law and Practice

The immigration guidelines provide that a discretion may be exercised by an officer to recommend landing in Canada on the basis of humanitarian or compassionate considerations. Guideline I.S. 1.39 covers a broad range of situations in which landing within Canada may occur. I.S. 1.39 (3)(c) deals with "Long-Term Commitment to, and de Facto Residence in Canada". Subsection (iv) B makes specific reference to illegal migrants:

> iv) Examples of cases which may also merit a recommendation for landing in Canada are:
>
> B) Persons who may have entered illegally or who have been without status since their legal entry, who have demonstrated as a result of their successful establishment that they warrant special consideration and who have come to the Commission's attention voluntarily. An individual's length of residence in Canada might well be taken into consideration when determining whether or not to deal with such an application. (Appendix J)

It is generally provided that the guidelines are not intended as hard and fast rules. Officers are encouraged "to consider carefully all aspects of cases, use their best judgement, and make the appropriate recommendations."

The broad discretion permits responsiveness to the particular circumstances of each case. However, it also permits wide variations in interpretation from city to city. The general structure of the Immigration Commission is highly decentralized on a regional basis. Central direction is only provided upon requests from the regions or when representations have been made to the Minister. When cases do come to national headquarters of the Commission, they are considered by a committee of senior immigration officials.

The C.B.A submission was critical of the manner in which this case-by-case discretion is being exercised by officials:

> The de facto resident provisions are presently much more strictly applied than when first introduced. Although the Commission's explanation has been the declining quality of applicants, in our experience, cases which would clearly have succeeded at the outset of the program are now being refused. (Appendix A, p. 17)

And it added further:

> The present policy as outlined in I.S. 1.39(3)(iv)(c) of the Immigration Manual is not set out in a sufficiently precise manner. The resulting uncertainty and lack of uniformity in the application of the guidelines is undoubtedly a major factor in the reluctance of illegal immigrants to come forward and apply to adjust their status. The manner in which the guidelines are applied also creates considerable difficulties for legal counsel in the advice they provide to their clients. (Appendix A, p. 22)

A number of respondents commented on the inconsistency in the exercise of discretionary powers by Commission officials. Perhaps that is inevitable where such a broad range of situations is covered and where decision-making is highly decentralized.

Nevertheless, we are of the view that the discretionary power to land long-term illegal residents has been vastly under-utilized. The Commission does not have a breakdown of figures which would reveal the number of illegal migrants landed in this way. However, its estimate is that, of the 18,941 Orders-in-Council permitting persons to be landed within Canada, fewer than 100 involved long-term illegals.

C. Proposed Changes

1. General Approach

The exercise of discretion in relation to illegal migrants involves some unique considerations. It is in Canada's interests to reduce its illegal migrant population, but unless clear and attractive criteria and procedures are established, those who might be considered will not come forward.

Recommendation: The criteria and procedures for granting discretionary landing to long-term illegal residents should be established independently of the criteria for other discretionary landings.

If properly established and administered, this process should serve to identify not only illegal residents who qualify for landing but also others who do not qualify and who must, therefore, depart. How can persons be attracted to come forward at the risk of being denied? One approach would be to provide differential treatment to those illegal residents who come forward voluntarily from those who are detected through normal enforcement mechanisms.

At present, it is normal enforcement practice to permit voluntary departure rather than invoking deportation procedures, in most cases. Deportation precludes a future application for landing from abroad or even entry as a visitor without special permission from the Minister. Voluntary departure bears no such restriction.

Recommendation: Long-term illegal residents who apply unsuccessfully for discretionary landing should be permitted to depart voluntarily without prejudice to an application for landing from abroad or future entry as a visitor. Those who are detected through regular enforcement procedures and are denied discretionary landing under this process should normally be deported.

Other suggestions were also received as to how illegal residents might be encouraged to come forward. More than one respondent suggested that those who were unsuccessful should be permitted to complete a medical examination in order to facilitate an application from abroad. Convention Number 143 of the International Labour Office provides that those who reveal illegal status but are denied permanent residence should be permitted to claim equality of treatment for themselves and family members:

> ...in respect of rights arising out of past employment and as regards remuneration, social security and other benefits (Article 9(1)).

Such an approach might have useful implications, as well, in relation to employers who exploit illegal migrants through wages which are lower than those prescribed by law. While the delivery system may be problematic, this avenue might warrant further exploration.

2. Criteria

We have received a large number of letters and briefs providing detailed suggestions as to the criteria which should be established for the landing of illegal migrants on a discretionary basis.

Some of these went far beyond the category of illegal migrants to encompass all discretionary landings within Canada. We do not consider it to be within our mandate to deal with such far-reaching proposals. At the same time, some detailed and thoughtful proposals have been submitted and warrant further consideration.

A substantial number of respondents suggested that the general amnesty of 1973 was not successful in attracting a large number of eligible persons who simply could not overcome their mistrust of immigration officials. Others dispute this suggestion, and it is certainly not borne out by enforcement experience which reveals very few cases which would have qualified under the 1973 amnesty. In the circumstances, and particularly because of the length of time which has passed, we see little harm and some benefit in permitting those who were eligible under the 1973 program to be assessed under those criteria at the present time.

This approach would permit the regularization of status of those who were eligible at the time but for some reason simply failed to apply. It would also reveal significant information as to the actual success of the 1973 program. It is inconceivable that it could act as a "pull" factor for other illegal migrants.

Recommendation: Illegal residents who were eligible to apply under the 1973 general amnesty and who have resided in Canada continuously since then should now be assessed for discretionary landing under the criteria which prevailed under that program.

Recommendation: The following criteria should be established for the discretionary landing of illegal migrants:

(a) The length of time the candidate has remained illegally in Canada (with a minimum period of five years for eligibility).

(b) The absence of convictions for serious offences (with immigration-related offences distinguished from criminal offences).

(c) The circumstances leading to the decision to become illegal and to continue in that status.

(d) Present and future capacity for successful establishment and integration into Canadian society.

(e) The presence of immediate, extended and *de facto* family ties in Canada.

(f) The presence of children, and particularly children born in Canada.

(g) The situation in the applicant's home country.

All of these criteria require more detailed elaboration, and the list might be expanded. In particular, guidelines will be required for "successful establishment and integration". For example, an individual might be able to survive in Canada for five years as a bottle-washer. However, if he has a wife and children abroad whom he is likely to sponsor, his prospects may not be very promising. Considerations such as "community regard" will also come into play, i.e., acceptance by Canadians in the neighbourhood, work place, and so on.

With respect to the situation in the applicant's home country, consideration should be given to whether the applicant would be subject to unusual difficulties if he or she returned. Special consideration should be given to countries which are democratic in form but not in fact.

3. Procedure

A number of respondents also commented on the procedure which should be established for decision-making in this area. As the response of one organization put it:

> A fundamental characteristic of the mechanism through which status adjustment and discretionary landing may be obtained is that it should enjoy a high level of public confidence. If it seems to be too closely identified with enforcement officials then many defaulters may be reluctant to come forward. (Appendix K)

The C.B.A. submission expressed a common concern about the exercise of this kind of decision-making by enforcement officials:

> Enforcement officials, by reason of the enforcement-oriented nature of their training and their function within the Commission, perceive the problem of illegal immigrants in a particular way. Understandably, their concern is with the proper enforcement of the Immigration Act, 1976. Adjustment of status decisions should not be made by persons who make enforcement decisions. The consideration of applications by illegal immigrants involves a host of social, political, ethnic and other considerations unrelated to immigration enforcement. (Appendix A, pp. 50-51)

A wide variety of options have been canvassed.

It would be possible to add this decision-making to the jurisdiction of immigration adjudicators. Another possible forum is the Immigration Appeal Board, either in the first instance or on appeal from an adjudicator. However, as suggested earlier, we do not believe that these decisions are appropriately rendered in a quasi-judicial sphere. They should continue to be exercised under the rubric of the Minister's discretionary authority under the legislation.

A number of respondents favoured the involvement of laypersons and ethnic organizations. Some suggested the establishment of boards to adjudicate applications or to act in an advisory capacity to the Minister. However, the negative features of such an approach were also pointed out to us, as in this letter from a Toronto community organization:

> ...we are concerned about any attempt to constitute community organization representatives as decision makers with respect to individual cases. We feel this would destroy our credibility in the community and undermine not only our effectiveness with respect to our advocacy role *vis-à-vis* immigration matters, but also all our other advocacy and informational functions with respect to government. (Appendix L)

Moreover, while there is a strong attraction to community involvement in this area of decision-making, the problems of uniformity of treatment and consistency from region to region could be compounded.

On balance, we believe that the best approach at this time would be to leave the effective decision-making with immigration officials but to centralize it within each region and subject it to central review. When illegal residents who are eligible for discretionary landing are detected through normal enforcement, they would be referred automatically, as would the illegal who comes forward voluntarily for landing, to a single, senior authority in each region.

Recommendation: All cases of long-term illegal residents who are eligible for landing should be dealt with by a single senior authority in each region, designated by the Minister for that purpose.

In addition, there should be a regular review of decisions by a single authority at the national level. Otherwise, there is a danger of wide variations in interpretation from region to region.

Recommendation: All decisions at the regional level which deny landing to long-term illegal residents should be reviewed automatically by a committee of senior officials in Ottawa appointed by the Minister for this purpose.

It should be kept squarely in view that the exercise of all of this decision-making by officials is, in law, and must be, in practice, in their capacity as delegates of the Minister. The Minister should, therefore, monitor closely and regularly the manner in which this function is being carried out.

Recommendation: The Minister should monitor closely and regularly the manner in which this decision-making is being exercised by the committee of senior officials, and should issue guidelines from time to time as required.

It would also be desirable to monitor the manner in which this function is being undertaken at the regional level, and this would provide an opportunity for greater community involvement. The Minister should receive direct communication from knowledgeable persons in each community as to whether there is a community perception that an appropriate balance is being achieved between the landing of long-term illegal residents and respect for our selection process and immigration enforcement. This would assist the Minister in issuing guidelines and could also assist in conveying to the community the difficulty of some of the "Solomon-like" decisions which immigration officials are called upon to make.

Recommendation: Committees of citizens knowledgeable in immigration matters should be established in each of the regions to monitor and report to the Minister on the success of the process for landing long-term illegal migrants and on the continued appropriateness of the criteria which are being applied.

The Issues Paper had raised the possibility of alternative "delivery" mechanisms to encourage illegal migrants to come forward. The possibility of an anonymous application through an agent was raised. An alternative was a "no-loss" provision whereby applications which were refused were simply destroyed rather than being referred for enforcement action. Many expressed concern about permitting an application to be made anonymously, through an agent. An organization in Edmonton felt that this:

> ...would be a regressive step and would provide unscrupulous agents and other persons with the opportunity to prey on the applicant. (Appendix M)

This view was shared in the C.B.A. submission:

> ...we feel a real concern that lawyers and consultants may take advantage of the illegal's situation... The tenuous position of the illegal already leaves the person open to being taken advantage of economically. The danger also exists that the unscrupulous agent, with total control of the situation, could misrepresent information without the applicant's knowledge and thus taint the application. (Appendix A, pp. 49-50)

We are of the view that these concerns are well-placed.

Community organizations are a more desirable route than lawyers and consultants for initiating applications. The C.B.A. submission added:

> A wider use of existing community services could greatly alleviate the potential abuse of illegal immigrants by unscrupulous consultants. Community agencies could determine the necessity for legal counsel and make appropriate referrals. (Appendix A, p. 50)

A similar recommendation came from Edmonton:

> We, therefore, recommend that voluntary, non-governmental organizations be considered as advocates and agents for the illegal immigrant who applies for legal status in Canada. (Appendix M)

Merely having the illegal migrant make contact with these agencies may have beneficial effects, even if no application is made. As the director of another organization stated:

> From past experiences, I have had to literally stand between enforcement officers and delay deportation of an "illegal" to prevent harm to an unborn child (as outlined to me by a doctor). In many other cases, the "prevention" of deportation resulted in approval by government for residency... I must add that I have provided "exit" for many more "illegals" than asked for or received special humanitarian consideration by government. (Appendix N)

Thus, such an agency may be prepared to take a firm stand on behalf of an illegal migrant where warranted, while, in many more cases, it may simply encourage the person to leave Canada.

The last submission also raised the question of funding for such bodies. We are of the view that the value for cost which they provide in roles such as the one envisioned here is very great. If the number of applications dealt with is substantial, some form of financial assistance should be provided, perhaps on a flat sum per application basis, with another sum for persons who are counselled but who do not make an application.

Recommendation: Voluntary, non-governmental organizations should be encouraged to act as advocates and agents for illegal migrants. Financial assistance should be provided to these organizations if the additional burden of work which they encounter proves to be substantial.

In these circumstances, we believe that anonymous applications would have a useful role to play. Anonymity is likely to encourage long-term illegal migrants to apply. Moreover, such applications would be of tremendous value in helping us gain a better knowledge of the size and nature of the illegal migrant population.

Recommendation: Long-term illegal migrants should be permitted to make a preliminary application in writing, anonymously. A preliminary ruling should be given which would be binding if the information were true, if no other seriously significant facts existed and if the decision were positive, subject only to medical and security clearance.

The gist of our recommendations in this chapter is to provide an effective mechanism to deal on a continuing basis with long-term illegal migrants. While rejecting general amnesties as a matter of policy and while strengthening border control and enforcement, there is a need to deal in a consistent and balanced manner with those who are here. If that mechanism is properly tuned, it will land those who should be permitted to stay, encourage others to leave Canada and tell us much more about the number of other illegal migrants in our midst.

CHAPTER FIVE

BORDER CONTROL: VISITOR VISAS

A. The Present System

Existing procedures at ports of entry require persons entering Canada to proceed through a "primary inspection line" (PIL). They are then examined briefly (an average of 20 to 30 seconds) by a customs officer, who performs this initial entrance examination on behalf of the departments of Immigration, Health and Agriculture as well as Customs. If an immigration problem is perceived or if the situation is one for which documentation is mandatory, the entrant will be referred to an immigration officer for a more detailed "secondary examination". Visitors intending to stay more than three months, students and temporary workers are documented, as well as persons whose bona fides as visitors is considered doubtful, regardless of length of stay. There is no system of inspection upon departure from Canada (nor is there from the United States).

This system was designed mainly as a "facilitation" mechanism to reduce the inconvenience which would otherwise be created if each person entering Canada were required to submit to the more detailed examination by immigration officers. Even a slight increase in processing time for each entrant can result in serious inconvenience to all legitimate travellers, including many Canadian citizens. Passenger traffic flow at airports can also create serious problems if not carefully managed. Entrants also tend to arrive in clusters as large airplanes unload during peak periods. Delays and inconvenience in processing may also have negative implications for the tourist industry, which is of considerable importance to our economy. It should be kept in mind that Canada receives approximately 35 million visitors per year, and that figure rises to about 75 million when Canadians returning from abroad are included.

In addition to the categories of persons who must automatically report to immigration officers for secondary examination, the customs officers have a second list, on microfiche, which gives the names of inadmissible persons. The Auditor General reported that, contrary to established procedure, and although the list of names on microfiche is regularly amended and updated, the customs officers seldom consult it because of the inconvenience of using the microfiche reader.

This microfiche material is published from a computer-based information system, known as the Field Operational Support System (FOSS), which was implemented in 1980. FOSS was designed as a base from which a total system could be developed. It is now in its second phase of development and has been expanded from the 12 initial terminal locations to some 57 locations across Canada. The system has records and information on persons who:

- are inadmissible or considered undesirable for entry into Canada;
- are within the immigration enforcement process;
- have been granted permanent residence since 1973;
- possess valid, documented visitor status or hold ministerial permits, and whose status has expired within the last 120 days.

It is anticipated that the third phase of FOSS will include an increased file volume resulting from the addition of local case files and the possibility of on-line updating of information. The feasibility of an automated on-line system for PIL officers is currently being examined.

B. Problems

Perceptions vary as to the effectiveness of our border controls. The Auditor General concluded:

> There is a lack of control at ports of entry to Canada. The Commission does not ensure that admissions authorized by Immigration and Customs and Excise Officers at ports of entry are proper and appropriate.[1]

He concluded that a significant factor was the reliance upon customs officers:

> The effectiveness of the primary examination, therefore, depends primarily on the ability of the Customs and Excise examining officers. The majority of these are not specialists in primary examinations because they are frequently rotated among a number of functions... The Commission has introduced some training for Customs and Excise Officers. However we noted that not enough officers have been given this training; consequently, Customs and Excise Officers are not always appropriately prepared to carry out the Immigration aspect of their responsibilities.

The view has also been expressed to us that further training would never give sufficient emphasis to immigration concerns as long as the function is being performed by customs officers.

Canadian officials performing immigration functions abroad tend to perceive our border controls as being weak. Some have reported that applicants who have been refused visas have openly boasted that they intended to proceed to Canada in any event because they were unlikely to be stopped by primary inspection.

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[1] Report of the Auditor General of Canada to the House of Commons, Fiscal year ended 31 March 1982.

The perception, of course, varies, depending upon one's personal experience. One letter from Vancouver stated:

> Those of us who arrived in Canada during the last 20 years are used to relatively unrestricted travel in Europe, and a free labour market in Scandinavia. Immigration controls in Canada are perceived as very tough (not to speak of the U.S.). My feeling is that tougher controls at entry points, visas, sponsored visitors etc. wouldn't go down well. (Appendix O)

As suggested earlier, our ocean barriers on three sides and the more favourable climate to our south provide considerable natural assistance in terms of border control.

In fact, considerable attention has been given recently to migrants using Canada as a route of entry into the United States. The United States requires that all visitors (except Canadians) obtain visas abroad before being permitted entry. Canada imposes such a visa requirement on a relatively small number of countries. As a result, many who could not gain entry to the United States are able to enter Canada legally and then make their way illegally across the long land border to our south.

While this is more of a problem for the United States than for us, it would be irresponsible for Canada to ignore it. We believe that our recommendations in relation to visitors visas at the end of this chapter, and in relation to enforcement in the next, could assist significantly in alleviating the problem.

It was suggested by the Advisory Council that with tighter controls in the United States, we might be faced with increased pressures from illegal migrants who would otherwise enter the United States. The problem in the United States is largely one involving movement over its southern border with Mexico. It may be questionable whether that movement could be expected to create pressures as far north as Canada. Nevertheless, we understand that there are now substantial and growing Mexican communities in American cities such as Chicago and Detroit. The implications of the illegal migrant movement to the United States, together with proposed changes to its immigration laws, warrant monitoring and analysis by Canadian immigration officials.

All indications are that the entry of illegal migrants into Canada through shortcomings in border control is relatively low. Approximately 95 per cent of those found to be in Canada illegally had, in fact, entered by lawful means. Most illegal migrants entered as visitors who were authorized to remain for up to three months, but who overstayed. Nevertheless, we are of the view that improvements in border control can be made. Moreover, such improvements could become increasingly important as the adoption of recommendations such as those in relation to visitor visas could lead to increased attempts to enter Canada illegally.

C. Electronic Exit Control System

Since the vast majority of illegal migrants to Canada do not enter illegally but come as lawful visitors who then overstay, is there not some way of keeping track of visitors who are in Canada to ensure that they do leave when their lawful visits have expired? Of course, knowing that a visitor has overstayed is not a complete answer. The person must still be located and removed. However, we would have a better idea of the number of illegal immigrants in Canada at any time, and enforcement would be enhanced by knowing the identity of many of these.

Prior to 1970, all visitors to Canada except U.S. nationals were required to complete a record of entry form. Upon departure, they were required to turn in their copy of this form to immigration officials. The system proved to be ineffective since the forms were simply deposited, unsupervised, into a container provided for this purpose. Many failed to deposit these forms, either deliberately or negligently. Some forms were delivered to immigration officials by friends who were travelling abroad in order to create the false impression that those who were documented had left Canada.

In order to be of much value, a system that determines the presence of illegal migrants by recording those who enter and those who leave, and then comparing the two records, must be almost "fail-safe". If the system can be deceived or is subject to error, valuable and scarce resources can be squandered in attempting to locate "illegals" who had, in fact, departed. Even if the system of recording were comprehensive and accurate, it could not record, for example, a person who entered Canada lawfully but subsequently entered the United States illegally. The difficulty of establishing a completely reliable system of recording is significant when one considers the volume of visitors and the number of ports of entry distributed over a large geographical area.

It would be crucial to any such system to provide for examination of visitors upon departure as well as upon arrival. At present, there is no authority in the Immigration Act to examine persons who are departing from Canada. Moreover, persons leaving Canada have no reason to co-operate with immigration officials through voluntary examination. Once again, the perceived benefits would have to be weighed against the inconvenience to all persons leaving Canada (including Canadians), passenger traffic at airports and the cost of doubling immigration interviews at ports of entry.

The Council recommended that the United States should be exempted from its proposed full entry and exit control system. However, there are a considerable number of U.S. citizens who are removed each year as visitors who have overstayed and worked without authorization. Such an exemption could also undermine the effectiveness of the control system by providing easier entry and exit for non-exempt persons. For example, they might enter in the same vehicle as U.S. citizens and be missed entirely.

The Advisory Council recommended that the exit control system should be implemented through an electronic system:

> ...whereby Canadian immigration officials have on record the identity, the country of origin, and the number of aliens entering, leaving, or due to leave Canada.

For such a system to be effective, it would have to be comprehensive. It has been estimated that it would cost Canadian taxpayers some $20 million to establish such a system, in addition to increased annual operational costs.

Even if a comprehensive and "fail-safe" system were devised, problems of maintenance might be encountered. As suggested in the Issues Paper, most of us have heard these hopeless words, "The computers are down", when attempting to obtain a bank balance or an airline reservation. Usually, essential business still can be conducted. But what is an inspection officer to do when plane-loads of passengers are anxious to depart or enter? Would documentation have to occur manually for later verification and follow-up? If entries are missed, the comprehensiveness is lost. Of course, systems should not be constructed on the assumption that computers will fail. On the other hand, that machines are subject to mechanical and human failure should not be ignored completely.

The C.B.A. submission did not favour such a system:

> To be effective, an electronic border control system would have to be complemented by a more effective and comprehensive inspection system upon entry and a thorough enforcement mechanism to follow up non-compliance with exit requirements. The cost of such a system would be staggering.
>
> Further, such a system would undoubtedly impede passenger flow at airports, causing inconvenience to travellers and creating a serious negative impact on the tourist industry. The potential for abuse of such a system, its information-gathering potential and its potential application to residents of Canada causes us great concern in terms of potential civil rights' violations. (Appendix A, p. 46)

One major airline company shared these concerns:

> Exit controls create either paper or electronic nightmares containing information about law-abiding travellers. Dishonest passengers give false information or use other methods to circumvent the system... Exit controls hinder the flow of departing passengers, take up valuable airport space and cause flight delays. (Appendix P)

However, many respondents wrote in support of such a system in spite of the cost.

As one brief put it:

> ...it is a shortsighted policy that would shy away from the financial costs that effective controls would entail, only to incur even greater financial and social costs in the detection and removal of defaulters at a later stage. (Appendix K)

Some officials in our posts abroad also saw considerable value in an international computer "hook-up". For example, applications denied at one post would quickly come to the attention of other posts, thereby discouraging multiple applications.

We are of the view that a comprehensive exit control system is not required at the present time. We are particularly concerned about the potential delays and inconvenience to passengers. We are also conscious of the great cost, not only of establishing a comprehensive electronic system but of administering it.

Nevertheless, we are of the view that in an increasingly sophisticated world, such a system is inevitable in the future. The time could also come when we have a pressing need for such a system.

Recommendation: A comprehensive electronic system of entry and exit controls, with complete linkage to all posts abroad, should be established as a long-term goal for our immigration system. Future airport renovation and all other related planning should take such a system into account. Meanwhile, continued improvement of computer capability should proceed as rapidly as possible.

D. Other Border Control Initiatives

1. Background

The Auditor General pointed out that a number of studies have been conducted to measure the effectiveness of the primary inspection:

> Those studies showed that the primary examination was not an effective means of determining who should be referred for a secondary examination. However they could not determine what changes would make the process more effective. They revealed that procedures at the various ports of entry never varied, making it easy for those wishing to do so to enter Canada fraudulently.[1]

Apparently, no follow-up action has been taken on these studies because officials considered them to be inconclusive. Negotiations between the Immigration Commission and Customs and Excise Canada have been continuing since February 1980 to establish clearly and formally their roles and responsibilities in relation to primary inspection.

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[1] Report of the Auditor General of Canada to the House of Commons, Fiscal year ended 31 March 1982.

It appears to us that a certain inertia has developed in relation to any possible changes with respect to the immigration function at ports of entry. We believe that experimentation should occur through a series of pilot projects, which might have useful control and enforcement consequences as well as providing better information as to what future direction broader changes might take. Mere variation of procedures would have a value in itself in reducing the predictability of the system by those who wish to enter fraudulently.

2. Separate Inspection Lines

The Special Joint Committee on Immigration made reference to the primary inspection line in its report to Parliament:

> In this connection the Committee wishes strongly to recommend the establishment of separate inspection lines at international airports, one for Canadian residents and others for visitors and new immigrants. This would speed up the examination for returning Canadians who in this day of giant aircraft may often be subjected to delays. If this small step were taken it would be possible to place trained immigration officers on the primary inspection line for visitors and immigrants, where their experience would be valuable.[1]

In our view this recommendation makes eminently good sense. Similar systems have been adopted by many other countries.

It is not clear to us why such a system has not been adopted throughout Canada. We recognize that one problem may be space restrictions at some of the airports. However, that would not preclude increased experimentation through a pilot project at a limited number of locations. The "channelling" might be broken down even further to separate documented visitors, U.S. residents and other visitors (i.e., those without visas). Attempts should be made to monitor the relative efficiency of this approach.

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[1] November 6, 1975.

Recommendation: A pilot project should be established at a limited number of airports to test the effectiveness of separate primary inspection lines. Customs officers should be replaced by immigration officers at the non-Canadian lines.

3. Duplication of PIL Function

While there has been a great deal of comment about the difficulties created by having customs officers perform the primary immigration inspection, there appears to have been no accurate measurement of their effectiveness relative to that of immigration officers. This could be achieved simply by requiring each passenger to undergo a second "primary" inspection by an immigration officer. Each would fill out cards separately. The results could be compared later, together with the results of any secondary examinations which occur.

Recommendation: A pilot project should be established to duplicate and thereby compare the relative effectiveness of immigration and customs officers in relation to primary immigration inspection.

4. Landing Cards

A number of countries currently require landing cards to be filled out, and they were required in Canada at one time. Such cards, requiring information as to birth date, nationality, passport number, home address, destination address in Canada and purpose of visit, should be re-introduced on a limited and "trial" basis for non-Canadians or permanent residents. They could yield information which might facilitate both primary and secondary examination, as well as being of assistance to investigators for subsequent "follow-up". Depending upon their value, they might be extended or eliminated.

Recommendation: Landing cards should be introduced on a limited "trial" basis for visitors entering Canada. If proven to be of value, their use should be made universal.

5. Comprehensive Documentation and Monitoring

While detailed and comprehensive examination is not possible with respect to every visitor to Canada it is possible on a "spot-check" basis. This technique has a recognized deterrent value and should be tried in relation to visitors to Canada.

For example, certain flights would be designated for this special procedure. When the flight arrives, all passengers who are not Canadians or permanent residents of Canada would be subjected to full secondary examination. The information would be forwarded to investigators in the destination point to monitor arrival and departure. In addition to the deterrent effect, such a project could provide valuable information in relation to patterns of illegal migration to Canada.

While such steps might seem to some to be unnecessarily aggressive, they are apparently utilized in other countries. One respondent related the following experience in relation to a visit to Australia in recent years:

> When I applied for a visa to visit, I was required to furnish addresses where I would be staying as well as the amount of time I would spend in the country. When I landed in Melbourne, I was again asked to furnish those addresses and they were checked against those previously provided. In addition, an official had called the residents where I planned to stay to verify that I was coming, later that I had indeed arrived and finally after I left to make certain I was out of the country. (Appendix Q)

The phone calls sugggested that if anything was amiss, an official would soon pay a visit. While the proposed pilot project would only introduce this approach on a random basis, it could convey a useful message to home countries which are sources of illegal migrants.

Recommendation: A pilot project should be conducted whereby entire flights would be referred for secondary examination and subsequent monitoring.

6. General

While these pilot projects have been outlined in very general form, each provides a concept as to how border control might be measured and, possibly, improved. A number of them might be implemented in combination. A clear statement of objectives and monitoring procedures is obviously required.

It would be extremely important that a sensitive and understanding explanation be provided to the passengers who are subjected to additional delay and inconvenience as a result of such pilot projects. Advance publicity would be desirable (although, obviously, not the identification of flights) to avoid misunderstanding. Care should also be taken in the selection of flights to avoid suggestions of discrimination or a "targetting" of visitors from a certain country. We believe that if the pilot projects are properly explained and sensitively administered, they could be executed with a minimum of problems.

Recommendation: Clear objectives and monitoring procedures regarding pilot projects should be established. Projects should be carefully explained to the public and should be sensitively designed and administered by officials.

E. Extended Visitor Visa Requirements

1. Existing Policy

Under the Immigration Act, a visitor visa is required for entry into Canada from any country unless that country is specifically exempted from the visa requirement. In practice, approximately 80 countries are exempt from the visa requirement, while 85 countries are covered. Apart from visitors from the United States, in 1981, 85.5 per cent of visitors came from countries which are visa exempt, while only 14.5 per cent entered with visitor visas.

The United States has a universal visitor visa requirement. However, Canada is the only country which has been exempted from the U.S. visa requirement.

The bases upon which Canada has granted exemptions in the past are varied. They include traditional, historical, economic and cultural ties; volume of visitor traffic; bilateral agreement; and reciprocity. In 1977, the government endorsed in principle the extension of visa requirements to any country posing a significant control problem. Since 1977, visitor visa exemptions have been removed for the nationals of 12 countries, most recently in relation to India in 1981.

2. Elimination of Visa Exemptions

In many respects, the imposition of a visa requirement is the most effective of all control mechanisms. It permits a screening of applicants abroad so that, at least, the most blatant cases of non-genuine visitors may be excluded. The absence of a visa requirement can be viewed as a strong "pull factor" for unemployed persons in under-developed countries. Even a few years of menial employment in Canada can allow the accumulation of funds which would be unheard of in the home country. If entry is denied abroad, there is effective control without the cost of transportation to the "visitor" who is turned back at entry or the cost to Canada for enforcement and removal after an overstay following entry. Assessment overseas also permits the decision to be delayed pending completion of criminal and other background checks.

In every instance where a visa requirement has been imposed, there has been a reduction in the percentage of would-be visitors who are denied entry to Canada at our borders. Genuine visitors benefit since the screening abroad means that they rarely encounter difficulties upon arrival at a port of entry. If they are denied entry, they have the right of appeal to the Immigration Appeal Board.

Visa requirements have also proved effective in reducing the number of persons who must be removed from Canada. In every instance where visas have been introduced as a control mechanism, there has been a significant reduction in the rate of removal from Canada of illegal migrants from the country concerned.

For example, in October 1981, the visitor visa exemption was removed from India when an unprecedented surge in the number of claims for refugee status by Indian nationals began to jeopardize Canada's refugee determination system. The visa requirement was seen at the time as also providing some protection to Indian nationals against exploitation by unscrupulous "consultants" and travel agents in that country. Special efforts were made to enhance our capacity to process visa applications, including increased staff and attempts to provide "same-day" service for applicants who appear in person at the High Commission in New Delhi. In spite of continued problems in relation to the verification of documents, over 1,000 visas have been issued per month, with a refusal rate of slightly less than 20 per cent. The abuse of our system from this source country has been virtually eliminated.

One respondent wrote to emphasize the importance of the role played by our visa officers in countries subject to the visa requirement:

> ...very careful consideration should be given to the type of people who will be staffing the Canadian Embassies and Consulates in these countries. The most humane and enlightened systems can be wrecked when handled by the wrong type of bureaucrat; the cold and soulless type who delights in exercising petty power and who seeks every possible means to block a request for a visa. An in-service training course in human relations should be a "must" for staff working in sensitive areas.

The writer is a Canadian citizen who wrote of the hardship he experienced following the imposition of the visa requirement upon Haiti.

By far the majority of respondents favoured the extension of the visa requirement as a method of border control. For example:

> The use of the visa is a good way of controlling entry from outside Canada. What I find surprising is that 80 countries are visa-exempt. That figure seems abnormally high. If a country like Australia can demand visas from a fellow member of the Commonwealth, then surely we can be a little more careful about exempting 80 countries in such a sensitive area. (Appendix Q)

We are in complete agreement and see the visitor visa requirement as an important and effective technique of border control.

However, we also recognize that the decision to remove a country from the "exempt" category is not solely the prerogative of the Minister of Immigration. Since considerations such as relations with other countries come into play, the decision must be made by the government rather than by a single minister. We believe that a major review of the list of visa-exempt countries is in order. In the absence of compelling reasons, the visa exemption should be removed from all countries except the United States.

Recommendation: The government should undertake a major review of the list of visa-exempt countries, and, in the absence of compelling reasons, should remove all countries except the United States.

The Issues Paper referred to the rate of removal from Canada of illegal migrants from various countries, expressed in the number of removals per 100 visitor entries. The most recent figures indicate a rate of 5.3 for Guyana (486 removals). Next in line are Jamaica with a rate of 4.6

(1107 removals); India at 2.2 (608 removals); Portugal at 1.5 (164 removals); and Peru at 1.3 (79 removals). All others have a rate of less than one removal per 100 visitors. Many respondents favoured the removal of the visa exemption wherever the rate of removal indicates an unusual enforcement problem. A rate which surpasses one removal per 100 visitors was suggested as an appropriate threshold.

However, we also received representations to the effect that the high rates for Guyana and Jamaica are directly attributable to increased enforcement against visible minorities. We have received no evidence to support such an allegation. The "reactive" enforcement policy which is discussed at the beginning of the next chapter would suggest the contrary, at least with respect to immigration officials. (One study indicated that some 38 per cent of deportable aliens were referred by private informants.) The situation with respect to referrals from law enforcement agencies (45 per cent in that study) may be less clear.

We consider the rate of removals to be a reasonable indicator to trigger the elimination of a visa exemption. However, we prefer a comprehensive review and drastic reduction of the exemption list. If there are special reservations in relation to certain countries, some of the exemptions might be eliminated subject to re-consideration after a period of time.

Recommendation: If there are special reservations in relation to the elimination of the visa exemption for certain countries, the elimination might be subject to re-assessment after three years.

A number of respondents supported the extension of the visa requirement but expressed one reservation:

> [Visas] can have life or death implications for people fleeing from persecution, and for whom Canada is the only accessible place of asylum. Visa requirements should never close off escape routes for these people. (Appendix R)

Others urged that a visa requirement should not be imposed upon a "refugee-producing country" or one which is a "gross and flagrant violator of human rights".

Recommendation: The decision to remove a visa exemption should take into account the human rights record of the country in question.

If posts abroad are to be effective in exercising proper judgment in relation to visa applications, they should receive appropriate "feedback" in relation to enforcement in Canada. Posts have not in the past received regular reports on the enforcement situation in Canada, either in general or by nationality. Only occasionally have they been made aware of problems with individual cases.

Recommendation: Steps should be taken by the Commission to provide information to posts abroad on a regular basis in relation to enforcement.

3. Cost Implications

The extension of the visitor visa requirement to additional countries would require the allocation of additional resources. Before an exemption is eliminated, the Minister should be satisfied that processing facilities and resources are adequate. However, the cost of such resources would be relatively small in comparison with the costs of investigation and removal of an illegal migrant who is in Canada.

While the following figures are calculated based on a number of assumptions, they do provide a clear picture of the financial advantage of visitor visas as a control mechanism. The cost to the Commission of refusing a visa abroad is in the vicinity of $16.40 per case. The cost of removing a person upon arrival leaps to $787.67 per case, while removal following admission to Canada rises to $2,078.20 per case.

In any event, we are of the view that the costs of processing visas abroad should be recovered through the imposition of a fee similar to the fees now charged for Canadian passports and other consular services. The fee should be a flat rate for ease of administration and should be significant but generally consistent with similar fees charged by many other nations, including the United States and Australia.

The fee should apply not only to visitor visas but also to immigration visas and student and temporary worker authorizations. Certain exceptions should be specified, such as for refugees, persons entering as members of the Designated Class and diplomats. Fees for family class applications might be collected from the sponsor in Canada.

While there may be some concern about the possibility of imposing barriers to tourism, we do not feel that this is a serious problem. Canadians pay such charges when travelling to other countries. In any event, the fee would be small in relation to travel costs from every country affected.

Recommendation: A processing fee of $50 per application should be imposed for processing visa and other applications (with certain specified exceptions).

4. Sponsored Visas

The Issues Paper pointed out that Mr. Axworthy has expressed concern about the effect on Canadian citizens and permanent residents of removing visa exemptions from the countries of their relatives and friends. In times of crisis, such as serious illness or death or on other occasions, the visa requirement could delay travel plans at great inconvenience to all concerned.

However, we received no representations relating such problems. Indeed, one provincial cabinet minister wrote:

> We are not aware of incidents where visa requirements caused hardship or inconvenience to bona fide visitors during an emergency such as illness or death in the family. As a matter of fact, we have heard many positive remarks about the quality of service provided by the Canadian visa staff in New Delhi. (Appendix S)

Officials have taken some pride in being able to provide "same-day" service in urgent cases and humanitarian situations. Often visas can be obtained more quickly than international flight arrangements can be made. Even if a visitor were to arrive in Canada without a required visa in an emergency, entry could be allowed under Section 19(3) of the Immigration Act.

Nevertheless a number of respondents found the concept of a "sponsored" visitor to be attractive. It would provide some manner by which Canadians could assist and facilitate the issuance of a visitor visa to their friends and relatives abroad.

A visitor sponsorship form could be made available at all Canada Immigration Centres. The form could be completed by a Canadian host and mailed to the applicant abroad, who would then attach it to his or her application for a visitor visa. It would then serve as proof to the visa officer of the details of the proposed visit and, particularly, of the willingness of the Canadian host to post a personal bond to guarantee that the relative will return home upon the completion of the visit.

Recommendation: A visitor sponsorship form should be developed and made available at all Canada Immigration Centres whereby Canadians could assist visa applicants abroad.

CHAPTER SIX

ENFORCEMENT WITHIN CANADA

A. General Enforcement Policy

The Advisory Council observed variations in the approach to enforcement in different regions. However, it found a general tendency to be "reactive" (e.g., to the "tips" of informers), rather than "proactive" in the sense of aggressively seeking out and dealing with illegal migrants. A study of enforcement action in Toronto supports this view. It indicates that some 38 per cent (316 in number) of deportable aliens were referred by private informants, while another 45 per cent (369 in number) were referred by Metropolitan Toronto Police.

It should not be assumed that a reactive enforcement policy necessarily leads to an unacceptable level of enforcement. The type of offender must be kept in mind. Since it is not a single transgression but a continuing "status" offence which is involved, the chances of the offender being revealed are relatively high. That is particularly the case in a highly organized society in which interaction with government officials occurs with some regularity. Even with such a policy, the Immigration Commission now has over 100 officers assigned full time to investigation (as well as many more on a part-time basis). During 1981, Commission officials conducted some 75,000 investigations.

In any kind of large-scale enforcement activity, the issue of priorities in the deployment of resources must be addressed. In the enforcement of the criminal law by police forces, for example, many reported offences receive no further investigation beyond the recording of the information provided by the victim ("break and enter" of residences is a prime example). In the context of immigration enforcement, the heavy reliance upon informers and referrals from police forces is highly cost-efficient. There is a high likelihood of success for every investigation which is undertaken. Moreover, once detection occurs, the application of procedures leading to removal is strict. Leniency through the exercise of discretion seldom occurs at this stage.

Consideration must also be given to what may be involved if, as the Advisory Council has suggested, the Commission is to "more actively seek out illegal immigrants." Since there is no particular "event" or "incident" which is being investigated, a proactive approach requires investigation based solely upon suspicion. The implications are for "targetting" certain groups, including visible minorities. Since the highest rate of removal of illegals has been found amongst visitors from Guyana, Jamaica and Portugal in the past, a proactive approach would suggest infiltration and raids upon these ethnic communities. Are Canadians prepared to tolerate such conduct on the part of government officials?

Similarly, since employment of illegals tends to occur in certain industries, "spot checks" of certain hotels, factories, etc., with a high number of employees from certain ethnic groups might be expected. Again, Canadians must ask whether an increase of such activity on the part of government officials is what they want. Finally, there is no assurance that such a proactive enforcement approach would produce any more than a marginally higher rate of success in detecting illegal immigrants. In sum, both the financial cost and the negative effects in terms of community relations must be weighed, as well as potential gains in enforcement.

If a truly proactive enforcement policy were to be pursued, consideration would have to be given to providing increased powers of investigation through legislation. At present, immigration officers do not have powers of search and seizure. Nor is there any legal obligation on the part of individuals to co-operate with them in the course of investigations. Investigation of illegal employment is made difficult without even the power to compel employers to produce personnel records of their employees. In weighing possible legislative encroachments upon the freedom of individual Canadians, it is customary to ask whether the evil is so great as to warrant such a far-reaching response.

All of these considerations were raised in the Issues Paper, and many respondents commented on them. A number of responses tended to be rather schizophrenic, favouring strong enforcement in the abstract but rejecting many of the specific measures which such an approach would entail. However, many shared the following view:

> As a general comment, may I say that I am opposed, as a citizen, to the "targetting" or "raiding" of groups likely to harbour illegal immigrants, to extension of fingerprinting, and to the imposition of compulsory, universal employment documentation. Canada is an open, free country. The problem of illegal immigration in this country is certainly not large enough to warrant such infringements on our precious freedom. (Appendix I)

The C.B.A. submission concluded that while improvements are possible, there is no serious need for changes in the enforcement sphere:

> Since the Adjustment of Status program in 1973, the Immigration Commission has implemented a number of mechanisms to control illegal immigration to Canada and to detect persons who remain here without status. As mentioned previously, the use of distinct Social Insurance cards for non-immigrants has made employers more aware of the question of status in Canada, and illegal immigrants have increasing difficulty in locating and keeping jobs. Such mechanisms as bonds imposed upon arrival, computers at major ports of entry and increased police co-operation have resulted in an effective system of enforcing the provisions of the Immigration Act, 1976 and the Immigration Regulations. As the Issues Paper on Illegal Immigrants pointed out, a reactive enforcement system can be effective and the present experience would seem to point to its effectiveness. (Appendix A, pp. 47-48)

While there are a number of areas in which we feel that improvements may be made, we have not found a compelling need for a much more intensified and aggressive enforcement policy. Our recommendations for improvements are discussed below.

Recommendation: Canada should continue with an essentially "reactive" enforcement policy, with certain improvements.

While fingerprinting of deported migrants is authorized by the Immigration Act, the general policy of the Commission has been to fingerprint only if the person concerned has been convicted of a criminal offence or if there is good reason to believe that the person will return to Canada without consent. Nevertheless, all deported aliens are documented, and the record of their deportation is entered in the Commission's computerized "look-out" system (FOSS), described earlier. While increased fingerprinting may be warranted in future, we consider the current restrained practice of enforcement officials to be appropriate.

Recommendation: The current practice of fingerprinting deportees only in special circumstances should be continued in the absence of a demonstrated need for comprehensive fingerprinting.

B. Prosecution

1. Employer Sanctions

Section 97 of the Immigration Act provides that:

> (1) Every person who knowingly engages in any employment any person, other than a Canadian citizen or permanent resident, who is not authorized under this Act to engage in that employment is guilty of an offence...

Subsection (2) elaborates on the meaning of "knowingly" by providing that the employer is deemed to have knowledge where "the exercise of reasonable diligence" would have provided it. The maximum penalty which can be imposed is a fine of $5,000 and imprisonment for two years. In practice, the courts tend to impose fines merely in the range of $75 to $500. There is little doubt that the area of employment provides one of the most fertile areas for enforcement in relation to illegal migrants. The prospect of employment may be a strong motivating factor in the decision to enter or remain in Canada illegally. If employment opportunities can be reduced, that motivation should also diminish.

Employers may knowingly hire illegal migrants because they represent a labour supply at low wages and minimal other employee demands. Alternatively, they may be ignorant of the status of the employee or even of the requirements in law. The Commission has engaged in publicity campaigns and the distribution of pamphlets to inform employers of the immigration law requirements in relation to hiring. However, many employers, such as those who hire domestic workers, are difficult to reach through normal "employer" mailings. Larger employers rarely employ illegal workers.

Prosecution of employers has not occurred with much frequency in recent years, as the following figures indicate:

1979 Cases Charged: 51; Cases Convicted: 42 (82.4 per cent)
1980 Cases Charged: 35; Cases Convicted: 27 (77.2 per cent)
1981 Cases Charged: 34; Cases Convicted: 19 (55.9 per cent)
1982 Cases Charged: 58; Cases Convicted: 29 (50 per cent)

A number of reasons have been given for the infrequency of prosecution and the relatively low conviction rate. These include:

(a) The difficulty of proving knowledge on the part of the employer that the employee was not authorized to work.
(b) Delays in bringing cases to court, which extend the period during which the illegal's removal must be delayed (since the employee will often be the most important witness at the trial).
(c) Minimal sentences, which lead to the conclusion that the deterrent effect is not worth the time, cost and effort.

One rather dramatic prosecution did occur during the course of our consultation and deliberations. The Dhillon case resulted in a sentence of three years in prison for an Edmonton businessman found guilty of seven counts of using threats and violence to force 14 illegal aliens to work for him. In what one newspaper called "a bizarre case of modern slavery", the illegal migrants came from India to Edmonton specifically to work for the building contractor. Upon arrival, they were relieved of their passports and money. Since they spoke no English and were ignorant of Canadian labour laws, they remained working in servitude until an anonymous "tip" to the RCMP led to investigation and prosecution. However, the prosecution in this case occurred under the Criminal Code rather than under Section 97 of the Immigration Act.

The Issues Paper contained considerable discussion of the definition of the offence in the Act. Consideration was given to the possibility of qualifying the word "knowingly", perhaps through imposing upon the employer an obligation to confirm the immigration status of every employee. Another provincial Labour minister commented that:

> ...requiring employers to submit to a request for confirmation on the status of a potential employee may result in discrimination against those persons with names associated with particular nationalities. Employers may choose to hire employees not requiring a confirmation of status. (Appendix T)

One association stressed the burden which such a requirement would impose upon certain employers:

> Horticultural employers are faced with a tremendous seasonal burden of obtaining employees to get their crops off in adequate time. Without an adequate work force, their whole year's investment of time and dollars can go down the drain unless this crop is harvested. In many cases, there is an extremely high turn-over of employees on a day to day basis. The ability of an employer to maintain records even for unemployment insurance regulations is indeed difficult. (Appendix U)

Another avenue which would make prosecutions more effective would be to provide legislative authority to compel employers to make employment records available for inspection by an immigration officer on demand. Many of the comments made earlier in relation to proactive enforcement are applicable here as well.

We received a number of comments and observations to the effect that the central difficulty with respect to the prosecution of employers was not the existing legislative provisions but the low priority which these prosecutions receive. It has been suggsted that greater will and better co-ordination amongst RCMP officers, immigration investigators and Department of Justice prosecutors could lead to far greater success. We are of the view that a measurement of the effectiveness of the existing employer sanction provisions is not possible in the absence of a concentrated effort to apply them. Recommendations as to how this might be achieved are included later in this section.

Recommendation: Efforts should be made to measure the effectiveness of existing employer sanctions through greater priority in their application.

2. Verification of Employment Status

The Social Insurance Number (SIN) card system has not proved to be an effective deterrent to employment of illegal migrants. Employees are not required actually to show employers a SIN card but must merely provide them with a SIN number within three days of obtaining employment. Numbers which commence with "9" are meant to alert employers that there are restrictions on the holder's authority to work in Canada. However, a study of deportable aliens in Toronto found that 55 per cent used no card or number, while 4 per cent used a fictitious number. Some 14 per cent used a borrowed card, and 16 per cent used their own cards. Only 10 per cent used stolen or counterfeit cards.

Steps have already been taken to follow up on the Advisory Council's recommendation that a study be launched to determine how to make the SIN system more secure. Our own inquiries suggest that there may be considerable scope for improvement in the linkage between the Unemployment Insurance Commission and the Immigration Commission through the SIN. We have also learned that steps are being taken in the United States to print its social security cards on currency paper to reduce the ease of counterfeiting. While it would take some time to replace all cards which have already been issued, movement in this direction should be considered now. Those who responded on the issue almost all rejected a universal identification system for Canadians.

Recommendation: Greater efforts should be made to increase the security of the SIN card system, including increased linkage between Immigration and Unemployment Insurance enforcement mechanisms and further steps to reduce the ease of counterfeiting cards.

3. Other Prosecutions

Illegal workers may be prosecuted under Section 95 of the Immigration Act. The maximum penalty is the same as that for employers. In most cases, prosecution does not occur, and the person is removed from the country as quickly as possible. Most respondents saw little value in prosecuting illegal migrants, even when they remain in Canada through discretionary landing. However, one rather irate Vancouver respondent had an interesting suggestion:

> ...the act should be changed to provide for the confiscation of all assets and property that the illegal immigrant accumulated while working illegally in Canada. (Appendix V)

While the invocation of such a provision might appear excessive in most cases, there may be extreme situations of blatant abuse in which it would be appropriate. In any event, the very existence of such a provision might provide a significant deterrent effect. Provisions for the confiscation of property exist in a number of other areas of federal regulation.

During the course of our consultations, one illegal migrant was detected after winning a $100,000 lottery prize. We understand that he is now making an application from abroad to gain admission as an entrepreneur!

Recommendation: Consideration should be given to amending the Immigration Act to permit the confiscation of assets and property acquired during illegal residence in Canada, for potential application in extreme cases of blatant abuse.

A person may also be subject to prosecution under Section 95 of the Act where he or she:

> ...knowingly induces aids or abets or attempts to induce, aid or abet any person to contravene any provision of this Act or the regulations...

Some respondents argued that greater efforts should be made to improve sanctions against those who harbour illegals:

> There should be real penalties for harboring and abetting. Anyone found doing this should be deported themselves or should not be permitted to have any further members of their family enter Canada, as a visitor or immigrant, for an extended period of time. (Appendix W)

In practice, prosecutions under this provision are exceptional. A great deal of discretion must be exercised by enforcement officials in this area and, as far as we have been able to determine, it has been exercised reasonably well. A Canadian citizen may be placed in a very awkward position when a relative from abroad overstays a visit. Prosecutions now occur only when there is some active obstruction of enforcement officers.

4. Increased Priority

As suggested under the heading "Employer Sanctions", we are of the view that there exists some ambiguity in relation to prosecution policy, particularly as it relates to employers. Steps should be taken to give increased priority to the prosecution of employers.

When illegal migrants are detected, enforcement action should go beyond steps taken for removal from the country. A complete investigation should be undertaken into the entire context of the illegal migrants' presence in the country, including any circumstances of employment. Such inquiries, in themselves, may encourage employers to take greater care in dealing with future applicants for employment.

Increased investigation should lead to more frequent and more successful prosecution, particularly if there is a dedication to the specific objective of prosecuting employers who knowingly hire illegals. Reliance upon informants, surveillance and undercover operations should be fully utilized once reasonable grounds exist to believe that an employer is knowingly employing illegals. To be effective, the dedication must extend beyond the investigative stage and into the prosecutorial role. Such prosecutions must be viewed as important and expressed to be so in sentencing submissions. Judges may have to be "educated" by prosecutors as to the serious implications of the presence of illegal migrants in Canada as a broad social problem. If the potential exploitation and enforcement costs which are a by-product of illegal employment are understood by courts to be directly linked to the strong attraction of employment opportunities, the seriousness of illegal employment is bound to be reflected in the sentences which are imposed.

We found it interesting to learn that in some countries, the employer of an illegal migrant not only may be prosecuted, but also may be required to pay the return air fare of the employee to the home country. Such a responsibility might well be considered for inclusion in future legislation.

Recommendation: Task forces should be established in Montreal, Toronto and Vancouver consisting of a Department of Justice prosecutor, an RCMP officer and a senior immigration investigator, all dedicated to the goal of increased investigation and prosecution of employers of illegal migrants. The project should continue for a twelve-month period, with a view to assessing the potential effectiveness of existing employer sanctions, and should be well-publicized for maximum deterrent effect.

C. Broad Directions in Enforcement

The Auditor General's report recently commented on the absence of rationalization in the enforcement area and the need for more clearly defined objectives. As a result, the Commission conducted a major review of the investigative function, which led to the establishment of new training courses and the development of instruction manuals dealing with investigation.

The Immigration Commission relies heavily upon the RCMP in the enforcement of the Immigration Act. The RCMP has Immigration and Passport Divisions across the country in which some one 100 officers are involved full time in immigration and passport investigations. Approximately 100 immigration officers are now engaged full time as investigators, mostly in Montreal, Toronto and Vancouver. Many immigration counsellors also do some part-time investigative work.

We are of the view that the regional decentralization of the enforcement function has certain features which detract from the clearly defined objectives sought by the Auditor General. For example, the decision to prosecute is frequently left with the RCMP, which appears to operate quite independently in each of the regions. Greater central co-ordination might prove effective not only in achieving uniformity in particular cases but also in pursuing various "scams", unscrupulous consultants and "trafficking" in illegals.

Most respondents strongly favoured greater involvement in enforcement by immigration officers rather than by law enforcement agencies. Some police forces have been subjected to strong criticism for a perceived lack of sensitivity to minority groups. Increased police involvement in this area could well lead to increased allegations of "harassment" to the detriment of traditional law enforcement in the criminal law area.

We have referred to the wide support which immigration enforcement seems to receive in the abstract and the diminution of that support in the concrete. The consequences of such a public attitude can lead to enforcement being perceived as unpopular yet being blamed for lack of success. As a result, it is likely to be underfunded and to receive reduced priority.

We are of the view that a much stronger role should be given to national headquarters of the Immigration Commission in relation to enforcement. A separate Investigations Section should be considered. Preventive programs might be pursued, such as initiatives to assist employers in detecting unauthorized workers amongst present staff and in ensuring that future employees are authorized to work. Reliance upon the RCMP for exercising prosecution decisions should be reduced in order to establish national priorities for immigration prosecutions.

Recommendation: National headquarters of the Immigration Commission should assume a greater leadership and co-ordinating role in relation to enforcement policy, including preventive measures and the establishment of prosecution priorities.

CHAPTER SEVEN

CANADA'S HUMANITARIAN TRADITION

A. Refugees Abroad

In setting out Canadian immigration policy, Section 3(g) of the Immigration Act recognizes the need:

> ...to fulfil Canada's international legal obligations with respect to refugees and to uphold its humanitarian tradition with respect to the displaced and the persecuted.

While a few respondents took the narrow approach that whatever happens in other parts of the world is "not our problem", many more recognized that in our shrinking world no country can isolate itself from the reality which millions of people are currently facing. There are an estimated 10 million refugees in various parts of the world today.

Mr. Axworthy has stated publicly on a number of occasions that the most effective contribution which Canada can make to resolving this major problem is through providing assistance abroad rather than through attempting to settle massive numbers of refugees in Canada. Our tax dollars and international efforts are able to make a far greater impact in alleviating human misery and tragedy if they are concentrated on the areas of crisis where those problems originate. At a recent international conference in Washington, D.C., Mr. Axworthy urged fellow ministers responsible for immigration and refugee matters to join together in pressing for a more co-ordinated international response to the problem, as opposed to an ad hoc approach whereby each nation goes its own way.

Canada can be proud of the manner in which it has responded to the plight of refugees in recent years. As a recent task force reported:

> Canada has been generous, and more than generous in its resettlement of refugees. It is one of the leading refugee resettlement countries in the world.[1]

We continue to receive a number of refugees selected by Canadian officials abroad on the basis of their capacity to settle successfully in Canada. In the Minister's most recent Annual Report to Parliament on Immigration Levels, it was estimated that Canada would receive 12,000 refugees in this way in 1983.

B. Special Humanitarian Programs

Our immigration laws and procedures also contain sufficient flexibility to respond to special situations in addition to our general reception of refugees abroad. For example, from time to time, Canada adopts temporary humanitarian programs to assist those who seek residence in Canada during a period of conflict or turmoil in their homeland. Such programs are flexible and may provide not only temporary refuge but also a relaxation of the rules for landing. The Minister has used them in such varied situations as the recent earthquake in Italy, the strife in Lebanon and El Salvador and the repression in Poland.

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[1] The Refugee Status Determination Process, November 1981, p. 104.

Many respondents to our Issues Paper recognized the need to take measures to curb illegal migration but expressed serious concern that such measures should not be so obtrusive as to interfere with programs reflecting this aspect of Canada's immigration policy. It was also suggested that some "fine-tuning" of mechanisms to invoke such programs would be desirable. The C.B.A. submission stated:

> The increased use of special programmes to relieve against hardship is most positive. However, the special programme is often implemented only after much hardship has already been suffered. For example, for the past several years, Iranian students in Canada have not been required to return to Iran where minor violations of the Immigration Act were involved. However, until recently, no programme was instituted to assist these students, most of whom did not want to return to Iran. They were only eligible to obtain work authorizations where they could show destitution, and this was also subject to individual officer discretion. Many sought unauthorized employment as the only way to support themselves. The situation in Iran has long been unstable with little likelihood of improving; the use of a special programme at an earlier date could have avoided the hardship suffered by Iranians in Canada over the past two years. (Appendix A, p. 42)

The submission recommends that a special program be adopted for Guyana.

We agree that it is essential that Canada respond quickly to special needs in Canada created by exceptional turmoil in certain countries abroad. It would be desirable for the Minister to receive regular reports as to which countries are most likely to create the need amongst persons in Canada for a special humanitarian program. In view of its daily involvement in monitoring political developments in countries throughout the world and, particularly, the consequences of those developments on individuals, the Refugee Status Advisory Committee would be an appropriate body for providing such reports.

Recommendation: The Refugee Status Advisory Committee, in consultation with the Immigration Commission and the Department of External Affairs, should provide the Minister with monthly reports as to those countries whose nationals are most eligible for consideration for special programs. (More frequent reports should be provided where escalation of developments occurs.)

The policy of rejection of a general amnesty should not be interpreted as ruling out, in future, special programs which might be characterized as "mini-amnesties". Such a program was adopted recently for Haïtians, who were residing primarily in Quebec. Conditions in their home country were such that, without such a program, most of them would probably have been driven "underground". Such programs should continue to form part of our range of options for responding to special situations.

In sum, a quick and sensitive response, when warranted, can be of great value in reducing the temptation of visitors to remain in Canada illegally. Such responses also demonstrate the vitality of our commitment to Canadian immigration policy as expressed in Section 3(g) of the Immigration Act.

C. Refugee Determination Within Canada

Persons who come to Canada may apply for status as Covention refugees. Canada's international commitment in this respect is also reflected in our Immigration Act, which adopts the following definition:

> "Convention refugee" means any person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion, (a) is outside the country of his nationality...

Once an application or "claim" is made, a rather elaborate process of "refugee status determination" comes into play. If the claimant is successful, permanent resident status will normally be granted.

Some of the difficulties surrounding our refugee status determination process were outlined in the report of a task force established by Mr. Axworthy.[1] As a result of this study, a number of changes were made which firmly established the independence of the Refugee Status Advisory Committee and modified the guidelines which it applied. Very recently, the Committee began, for the first time, to provide personal interviews to claimants on a pilot project basis.

However, further improvement and "streamlining" of the process is severely hampered by the legislative straight-jacket, which rigidly specifies the steps which must be taken in processing claims. In recent years, it has been the subject of abuse by some claimants with little chance of success, who invoked the process in order to be permitted to remain in Canada while their claims were being processed. The laborious procedure imposed by the Act, together with the dramatic increase in claims, has created serious delays in the disposition of cases.

Such delays not only render the system more susceptible to abuse but also impose increased hardship upon those who have legitimate claims. The Refugee Status Advisory Committee is currently taking steps to deal with vexatious and abusive claims within the options available to it. However,

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1. The Refugee Status Determination Process, November 1981, p. 104.

comprehensive legislative change is required to replace the present fragmented and laborious system.

Recommendation: Procedures for the determination of refugee status within Canada should be modified by comprehensive legislative amendment to the Immigration Act at the first opportunity.

The legal advisor in Canada to the United Nations High Commission for Refugees informed us that:

> During my two and one-half years as Legal Advisor in this UNHCR Branch Office, I have not come upon one case of a person intending to claim refugee status who has been "underground" and who is not willing or endeavouring to make himself known to Immigration authorities for the purpose of making a claim to refugee status. Whatever the number of illegal immigrants in Canada is, the number of potential refugee claimants is very small. (Appendix X)

Due to an anomaly in the existing legislation, it appears that a person may make a refugee claim in Canada only while in illegal status.

While arrangements have been made to permit "in-status" claims, many claimants are forced to place themselves in an illegal status in order to be permitted to work while their claims are being processed. Moreover, "in-status" claims carry no right of appeal, so some claimants will go through the entire determination process twice. This has serious repercussions throughout the immigration system, burdening it with unnecessary inquiries and consequent delays.

Recommendation: Immediate legislative amendment should occur through the next Miscellaneous Statute Law Amendment bill to remove the present anomaly with respect to "in-status" refugee claims.

Canada's internal refugee status determination process is another feature of our immigration policy in which Canadians can take pride by international comparison. However, it has outgrown its legislative garment. Moreover, it must be given the capacity to deal effectively with abusive claims. Otherwise, our resources will be squandered in fighting a rearguard action in Canada, when they could be so much more effectively deployed in attacking refugee problems at their source.

CHAPTER EIGHT

THE FAMILY CLASS AND PROCESSING

A central thrust of the C.B.A. submission (supported by a number of other groups and individuals) is that the fundamental problem in relation to illegal migration to Canada is not the question of controls or enforcement but of the selection criteria themselves and the manner in which they are applied:

> There are two principal methods of preventing much of the illegal immigration to Canada. The first is to allow for effective family reunification, humanitarian settlement programmes and equitable and efficient processing. The second is to maintain an effective enforcement system. (Appendix A, p. 24)

The Advisory Council had recommended that the system of assessing applicants and categorizing potential immigrants should be reviewed in order to achieve greater efficiency.

It clearly must be a central goal of the Immigration Commission to provide efficient and equitable processing of applications both in Canada and abroad. We recognize that this is a complex and difficult task considering the international scope of operations, the desperation of some applicants and the limited resources available. However, continuing efforts must be made to deal with problems and to introduce improvements. A review of the application process abroad was recently undertaken, and changes were implemented.

We did not consider it to be within the scope of our mandate or the time and resources available to us to conduct a review of the application process abroad (and in Canada). Nevertheless, we consider some of the recommendations which were received in relation to the processsing system to be worthy of further consideration by Commission officials. In particular, we found attractive Recommendation 7 of the C.B.A. submission:

> That before an Application for Permanent Residence is refused, particularly where a sponsorship application has been submitted, the applicant be advised of the outstanding concerns with respect to the Application and be permitted to meet those concerns prior to the refusal of the Application. (Appendix A, p. 36)

We believe that such communication between officer and applicant could well reduce delays and frustration, with possible implications for discouraging illegal migration. Better communication may also be possible between Canada Immigration Centres and posts abroad where applications have some special aspect, such as a last remaining family member or a dependant over the age of 21. Often these aspects first become apparent in Canada.

Recommendation: The comments and suggestions received in relation to the application process should be referred to Commission officials for a report to the Minister, with a view to immediate implementation where feasible.

The C.B.A. submission was specifically supported by one Member of Parliament who added:

> Our current Immigration Act is so written that family is defined in a narrow nuclear sense. This does not recognize Canadian tradition or history since many of our founders had extended families. Nor does it acknowledge that the bonds between extended family members are very strong throughout most of the world. The assisted relative class with the requirement of a pre-arranged approved job offer is little different from the independent class.

> I value our continued support of the family class applicants and the priority they are given. However I must seriously suggest that we extend this priority to the extended family. (Appendix Y)

The same view was expressed in a brief submitted from Toronto:

> The system of categorization of family class and assisted relatives fails to take into account the different realities of life in foreign countries... Often a client has been raised by a relative who does not fit within the family class (i.e. an aunt). The client feels the same emotional ties and sense of responsibility to this family member as a Canadian born client might feel toward his mother - yet he is unable to bring the relative to Canada... (Appendix Z)

A number of individual respondents wrote directly to express their disappointment at being unsuccessful in sponsoring relatives falling outside the family class.

For example, a couple in Oshawa has been seeking to assist a brother and sister in coming to Canada:

> We are financially secure and have a house with 3 levels over 3000 square feet of living. Together our salaries exceed $50,000. What else can a person do to get a relative closer. We are alone. I do not have one single relative, neither do my husband, in Canada. It gets lonely and God knows we have worked hard over the last 8 years and have never been unemployed. (Appendix AA)

Another forwarded a letter published in a newspaper in which a couple in their sixties referred to attempts to sponsor their youngest daughter and their two teenaged children, who all live in Wales:

> Immigration here told us our daughter must have a job offer to qualify. That's hard to get when she lives in Wales. We have enough money to support them in Canada. We also have a large home and they can stay with us until they get settled in Canada. I just can't put into words how we feel, having her in Wales unable to join us in this country.

The C.B.A. submission made, essentially, three broad recommendations which would:

(a) Extend the family class beyond the existing relationships.

(b) Broaden the ease with which more distant relatives outside the family class might be sponsored.

(c) Permit applications for the landing of family class members within Canada.

In another brief, two Toronto lawyers developed detailed guidelines for the application of discretionary procedures for the landing of relatives within Canada, even though they would fall outside the existing definition in the regulations. (Appendix BB)

There appears to be little question that broadening the criteria for the entry of relatives would reduce some of the pressure to enter and remain in Canada illegally. However, the suggestion also raises broad policy issues.

When persons are admitted under the family class, the criteria for successful establishment are not applied. Within our projected number of immigrants accepted annually, should this category be extended at the expense of independent applicants, who must qualify on the basis of factors such as education, employment and language skills? Family class immigrants tend to come from the same countries, regions and, indeed, villages as their predecessors. Is there some value in creating greater opportunities for "new stock" from other parts of the world, such as Africa, Central and South America, which have not been large immigrant-producing countries for Canada?

Another Member of Parliament expressed a contrary view to that of his colleague:

> The clauses of the immigration act with regard to "sponsorship" and "family reunification" should be limited, otherwise, we are opening a "flood gate" for literally millions of applicants. Our present system operates like a "pyramid scheme"... Limits must be set... (Appendix CC)

A Vancouver lawyer, experienced in immigration matters, stated:

> It is my respectful opinion that the emphasis on family class of sponsorship and the changing criteria virtually closing the door on the independent applicant to Canada, has not been good for Canada... Families whose culture emphasizes strong family ties seem to have dominated the majority of immigrants during the past years. The strong individual parent figure from a culture that does not emphasize the family connection, does not expect to join a son or daughter in Canada. In other words, we are receiving numerous family members who are just not as motivated or suitable immigrants as were the original sponsors. (Appendix DD)

This is obviously an issue on which polarization of views may easily occur.

A number of respondents made reference to one of the stated objectives of Canadian immigration policy as being the reunification of families. However, the wording of Section 3 of the Immigration Act, which officially states that policy, is as follows:

> (c) to facilitate the reunion in Canada of Canadian citizens and permanent residents with their close relatives from abroad; (Emphasis added)

The breadth of our family class definition compares favourably with the definitions of many other countries. For example, in England the family class is restricted to spouses and children. We understand that the exercise of discretion occurs only in a very limited number of compassionate cases.

Indeed, it has been suggested that the broad scope of Section 5(1) of the Regulations, which permits Canadian citizens to sponsor parents of any age, has led to the phenomenon of "courier parents". Parents who have no present intention of immigrating to Canada nevertheless become permanent residents with a view to gaining admission to Canada for other children prior to the age of 21. The children are then enrolled in Canadian schools and the parents return to their home country to live as before. The process, therefore, operates to facilitate the separation rather than the reunion of families.

In his last annual report to Parliament, the Auditor General expressed concern about a number of aspects of family class immigration to Canada. Recent studies raised questions about the ability of a significant proportion of the members of the family class to adapt to life in Canada. Moreover, the limited criteria for entry through this class were recognized as giving rise to "loopholes" which permitted circumvention of the selection system.

The basic question of establishing the criteria for entry is obviously central to our immigration policy. The scope of the family class and related questions is not a matter on which we discern any clear consensus. Discussion and debate in this area may be delicate because it may attract emotional and even racist response. However, the question is also of obvious concern to many Canadians.

As with the application process, we did not consider a review of the ordinary criteria for admission to Canada to fall within the scope of our mandate, and it was not raised in our Issues Paper. However, in view of the obvious importance of this issue to Canadians, we have published in full the briefs found in Appendices A and BB of this report. We hope that this will generate further public discussion and debate in relation to both sides of this issue.

CHAPTER NINE

CONCLUSION

The first objective in dealing with the problem of illegal migrants must be to obtain some acceptable estimate of the number involved. A start has been made, and continued improvement of the estimating process should occur.

As a matter of continuing government policy, a general amnesty should be firmly rejected as a present or future solution to this problem.

Effective control of our borders is a fundamental obligation of our government. Improvements must continue to be made. However, the adoption of a much broader visitor visa requirement (with the exception of the United States) is the most effective step which can be taken at the present time.

For those who do gain entry, we do not favour an aggressive, "proactive" enforcement policy. Nevertheless, clearer objectives and better co-ordination in investigation and prosecution policy could prove to be effective.

For those who have entered illegally, but who have become de facto permanent residents of Canada for a longer period of time, we believe that Canada's interests are best served by the exercise of discretion on an individual case basis. Our selection criteria in relation to security, health and capacity to settle must not be abandoned. However, where these are met, an effective method of case-by-case adjudication can prevent the accumulation of a significant long-term illegal population, without detracting from the integrity of the selection, control and enforcement processes.

Finally, some improvements can be made in Canada's continuing contribution to the alleviation of the consequences of tragedy and turmoil on an international scale.

In conclusion, we can do no better than quote the eloquent summary of one respondent who, we believe, speaks for many Canadians:

> If not for our immigrants, Canada would not exist today. If Canada did not have such a good image as a country of freedom and opportunity, we wouldn't have so many illegals trying to get in any way they can. We must be doing something right to be so popular, but a certain amount of firmness is necessary and more publicity in other countries should be used to discourage and/or prevent further violation of our immigration laws. Meanwhile we must deal with those already within our borders. (Appendix Q)

APPENDICES

Where opinions have been quoted in this report, all efforts have been made to obtain approval to publish the full submission. Where we have obtained approval, the full submission has been included in the appendices. Where we were unable to obtain approval in time for publication of this report, the full submission has not been included.

APPENDIX A

THE CANADIAN BAR ASSOCIATION

IMMIGRATION SECTION

SUBMISSION TO W.G. ROBINSON
SPECIAL ADVISOR TO THE MINISTER OF
EMPLOYMENT AND IMMIGRATION

ILLEGAL IMMIGRANTS ISSUES PAPER

Immigration Section
Canadian Bar Association

June 24, 1983

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I. INTRODUCTION

The Immigration Section of the Canadian Bar Association has prepared this submission on illegal immigration to Mr. W.G. Robinson, Special Advisor to the Minister of Employment and Immigration, who has been appointed "to co-ordinate further dialogue and analysis" on this issue.

The Immigration Section has obtained the views of members of the Canadian Bar Association interested in immigration matters, including the Immigration Subsections of the provincial branches of the Canadian Bar Association in Ontario, British Columbia, Manitoba and Quebec. Our membership, in this respect, is comprised primarily of lawyers practising in the immigration law field. As an association of immigration lawyers, the Immigration Section is naturally concerned with immigration matters generally.

In addition, the Canadian Bar Association Immigration Section has collaborated with the Immigration Collective of the Law Union of Ontario, who have made a valuable contribution to this Brief and whose members have assisted in its preparation.

II. THE PROBLEM OF ILLEGAL IMMIGRANTS

We have followed with interest the current public dialogue on the issue of illegal immigrants, arising out of the December 1982 report of the Canada Employment and Immigration Advisory Council, which called for a conditional form of amnesty for illegal immigrants. The discussion paper entitled "Illegal Immigrants Issues Paper" dated February 15, 1983, issued by Mr. Robinson, has served to focus the debate, particularly on the question of whether an amnesty of any kind is warranted at this time, given the scope of the illegal immigrant problem. In our view, based upon the experience of our members who represent illegal immigrants, illegal immigration indeed represents a serious problem. Whatever the exact numbers may be, there is a sizeable population of persons in Canada without proper immigration status.

Three problems addressed by this submission include:

(a) a background to the present problem;

(b) the measures to be taken to cope with the existing population of persons without lawful status in Canada; and

(c) the legislative and administrative reforms to be implemented to prevent a recurrence of illegal immigration in the future.

IV. SUBMISSIONS TO THE SPECIAL ADVISOR TO THE MINISTER OF EMPLOYMENT AND IMMIGRATION WITH RESPECT TO ILLEGAL IMMIGRANTS

A. INTRODUCTION - BACKGROUND TO THE PRESENT PROBLEM

Resolutions to the present problem of illegal immigrants in Canada cannot be adequately framed without a discussions of the context in which it has arisen. The present problem of "illegals" has its roots in recent immigration history and not just in the global economic situation. The following factors are ones which we feel have had a significant impact on the problem.

(1) Pre-1973 "Illegals"

The Adjustment of Status programme in 1973, as Mr. Robinson points out in his report, brought forward a relatively small number of illegal immigrants. There are persons in Canada who did not report during that period. This could have been for a number of reasons, but most significant in our view was the short reporting period of three months. It is important to recognize that many "immigrants" will be wary of Immigration officials and afraid to put their already tenuous position in Canada in jeopardy. The short reporting period did not give some illegals enough time to gain the confidence in the programme needed to report. Many did come forward, but there are still illegals in Canada who arrived prior to the Adjustment of Status programme and who would have been covered under it had they reported.

(2) Previous Weaknesses in the Enforcement System

When the Adjustment of Status programme was put into effect in 1973, major changes were implemented at the same time, the primary change being the requirement that immigrant visaes be applied for and obtained outside of Canada. However, there appeared to be no real consideration at that time as to what mechanisms should be implemented to prevent future illegal immigration to Canada. The failure of the Immigration Commission to impose realistic enforcement mechanisms at that time has meant that at least until later in the 1970's, it was relatively easy for "illegals" to take up residence in Canada. More recently, various mechanisms have been introduced which have had the effect of controlling illegal immigration to Canada. Such measures as the control of the availability of Social Insurance Numbers and the introduction of computers at major airports have effectively prevented substantial illegal immigration in recent years. There remain however individuals who were able to enter and integrate before improved enforcement procedures took hold.

(3) Changes in Immigration Policy

Changes in Immigration policy have indirectly encouraged illegal immigration to Canada. In the late 1960's and early 1970's, it was possible to gain residence in Canada from within the country. The Adjustment of Status programme in 1973 further permitted large numbers of persons to obtain permanent residence here. Then, through sponsorship of parents and siblings under 21 and, until later in the 1970's, the nomination of brothers and sisters, many families have relocated in Canada. While in some cases entire immediate families have been able to resettle in Canada, the tightening of assisted relative selection criteria has made it more and more difficult, and now virtually impossible, for families to reunite with those close family members still living abroad. We feel that this is contrary to the express legislative intention of the Immigration Act, 1976 "to facilitate the reunion in Canada of Canadian citizens and permanent residents with their close relatives from abroad." (Section 3(c), Immigration Act, 1976). At present, the only real mechanisms for acceptance of an immigrant application by an assisted relative involve approval for the family in Canada to employ the relative in a family business, and acceptance of the relative as a last family member remaining outside of Canada. However, these narrow avenues for entry are subject to wide officer discretion and have become virtually non-operative even for the small proportion of family members who should qualify under these limited criteria.

The tightening of assisted relative selection criteria has left no legal route by which these family members can now reunite with their relatives in Canada and so, family members have decided to come and remain without authorization.
In our experience, significant numbers of those who have settled in Canada without an immigrant visa fall into this category.

(4) Failure to Recognize De Facto Families

With a few exceptions, immigration law and policy has failed to recognize the existence of strong *de facto* family relationships. The nuclear family and the traditional and legal family forms of the dominant culture have been applied. In other cultures, many of which now form an important part of Canadian society and our new cultural mosaic, "family" has a broader meaning. Thus, those raised by relatives such as aunts or older siblings become these individuals' children or mothers in the real sense and acquire very real familial ties. As these family relationships are not recognized in the *Immigration Act, 1976* and Immigration Regulations and only rarely acknowledged through immigration policy, many of these individuals have come to Canada to settle with or near their families.

(5) Overseas Delays and Refusals

Both delays in overseas processing and unfair reasons for refusing applications are integrally tied to illegal immigration to Canada. Mr. Robinson points out in his report that it is unlikely that a person who has a legal avenue of immigrating to Canada will immigrate here illegally. While there are individuals who have come only after all legal avenues have been used, there are substantial numbers of illegals who, despite the eligibility, have come without first applying or completing available procedures outside Canada. In our view, the two major reasons for this are excessively long processing times in certain visa offices and unnecessary and unfair refusals, and then significant delay on appeals, which have led to an overall fear of rejection by applicants from certain countries. The length of processing time in visa offices such as Jamaica, Trinidad, India and Pakistan is such that even sponsorable applicants have given up hope due to delays and have jumped the queue to make applications from within Canada, or arrive in Canada, and where the family is afraid of refusal, simply remain with their family without authorization.

If it were only a question of delay during normal processing, more applicants might be willing to accept lengthy separation from their families. However, refusals on invalid grounds and decisions to refuse without giving the applicant the opportunity to first clarify or respond, have contributed to a general fear of rejection from certain visa offices. Fear of rejection is greatly compounded by the additional length of processing time involved where a refusal must be appealed, in Toronto, for example, at least six months before an Appeal Record is prepared, another six months for the case to be scheduled for hearing and at least a further six months for processing after the appeal is allowed.

Many refusals could be avoided if applicants were initially given an indication of the visa office's concern and the opportunity to respond with documentation which could ultimately lead to acceptance by the Immigration Appeal Board more than two years later. Other refusals are routinely founded on reasons already determined by the Immigration Appeal Board to constitute invalid grounds of refusal. Two prime examples are refusals of children of applicants where the applicant submitted the application for permanent residence prior to the child reaching 21 years of age and therefore legally eligible, but was not granted a visa until after the child's 21st birthday. The entire family is thereby refused due to the ineligibility of one family member, although an appeal to the Immigration Appeal Board two years later will be allowed and processing of the application will recommence.

(6) Unstable Situation in Country of Origin

Individuals of certain nationalities have become illegal in Canada because they were in the country at a time when their home country suffered a major upheaval and have remained without authorization, which was the case for certain Iranian citizens. Others, such as Salvadoreans, Guatemalans and Guyanese, came to Canada and remained because of the existing problems in their home countries.

Many choose Canada because of relatives who have already settled here. Many do not have relatives, but almost all have some ties to Canada, either through study at school in Canada or settlement with friends if not relatives. While there are many countries experiencing political repression and instability, significant numbers are ordinarily attracted to Canada only where there is a large national community to encourage settlement. Thus, for example, the thousands of displaced Somalians have not arrived in large numbers in Canada while Guyanese nationals have more frequently chosen to come to Canada because of a large settled community here.

(7) Economic Problems

The disparities between the Third World and countries such as Canada certainly contribute to the influx of illegals settling in Canada. This problem is ever present and we recognize its impact on illegal immigration. However, it cannot be seen in isolation from other more significant factors. Given the close bonds evidenced in most immigrant communities, persons are not likely to choose Canada unless there is already a viable support structure to assist in settlement, primarily through real or de facto relatives.

(8) Misinformation

There are persons who have been misinformed by well-meaning relatives, by unscrupulous consultants and lawyers and by other agencies such as school recruiters. This factor is not as significant now as it was in the early to mid 1970's. There are still people in Canada who were misled as a result of such persons, but in recent years, Canada's rules and policies have become more widely known abroad.

(9) Long-Term Legals Who Become Illegal

There is a sector of illegals who entered Canada to work or to study and who remained after it became clear that they would be required to leave Canada. Domestic workers are perhaps the most significant category of workers presently in Canada without status. Many came as domestic workers and remained once refused an extension of their status, prior to the present domestic worker landing programme. Many domestic workers and students felt they were already settled in Canada and viewed it as their home, and so were willing to take the risk of residing in Canada without legal status. In the case of domestic workers, many were further motivated by the feeling that they had been discriminated against. Extension of domestic visaes were handled in an inconsistent manner. While some domestic workers would receive several extensions of their status, suddenly without reason, they would be requested to leave Canada. Other domestic workers in the exact same position would not be required to leave, but would receive further visa extensions.

B. METHODS OF DEALING WITH ILLEGAL IMMIGRANTS - GENERAL COMMENTS

There are a large numbers of persons without status living in Canada, already settled and well-established and their situation must be resolved.

No one is in a position to accurately estimate the numbers of persons presently in Canada without status. However, from our experience the number appears significant. Since the inland landing programme for processing de facto residents under guideline IS 1.39 became operative several years ago, those of us who practice primarily in the field of immigration law have encountered a regular clientele of illegals, those who can make an application under the existing guidelines and many who have not been in Canada a sufficiently long period of time to qualify. In addition, those numbers coming forward to make refugee claims and to qualify under various special programmes indicate that a significant number of individuals exist who have remained without status or who have violated the terms of their visaes. All community agencies and centres servicing immigrants come into contact with illegals seeking advice as to what to do about their status. Many ministers of churches with large numbers of immigrant parishioners come into contact with illegals in their role as counsellors and in fact, many referrals to counsel for assistance are from ministers and priests.

Regardless of whether a lower estimation of 50,000 is correct or whether larger numbers of illegal immigrants exist in Canada, we strongly feel the problem cannot be ignored. It is imperative that a procedure be established to allow for the orderly regularization of status of persons presently settled in Canada.

The Robinson Report makes two key statements in its discussion of why a general amnesty is questionable. The Report states, "There is no visible crisis and there are no major changes contemplated in the 'rules of the game'". It also suggests a profile of the illegal immigrant. We feel it is important to deal with these questions, particularly in light of the analysis presented above.

(1) No Visible Crisis

There is a visible crisis with respect to the handling of applications and the removal of persons from Canada. Immigration offices in the major immigrant centres in Canada have ongoing difficulty in coping with the numbers of persons coming forward. At present, persons who voluntarily report to an Immigration Centre out of status routinely wait months before an inquiry is scheduled. Lengthy delays also apply to individuals who come to the Commission's attention involuntarily, if they are not in detention. Refugee claimants whose work authorizations cannot be granted until after the inquiry is adjourned pursuant to Section 45(1) sometimes wait as long as six months before being scheduled for inquiry. These delays have been brought to the attention of Immigration officials but there is no easy resolution to the delays. The delays occur in all the major Immigration centres, Toronto, Vancouver and Montreal.

The number of special and other programmes such as the domestic worker programme and the IS 1.39 landings on humanitarian grounds have no doubt increased the number of applicants being processed and landed from within Canada. This would account in part for the backlogs at the inland processing Immigration Centres. However, the fact that these programmes have been implemented points to a need to alleviate hardship for persons in Canada who may be illegal. The inland centres are already processing significant numbers of illegals under existing programmes. The Salvadorean and Chilean programmes, for example, brought forward many illegals and persons already in the enforcement stream because of lack of status. Many illegal immigrants also apply under the humanitarian guidelines set out in IS 1.39, particularly in the areas of the family dependency guidelines and de facto residence.

The recent avenue open to applicants for landing inside Canada to the Governor-in-Council (the Cabinet) under subsection 115(ii) of the Immigration Act, 1976, has further created serious backlogs within the Immigration Commission. Were this avenue more publicly known, it could have the effect of practically halting all removals from Canada. It has already had a significant impact on enforcement. Should the Supreme Court of Canada uphold the Federal Court of Appeal decision in Jiminez Perez v. MEI (a decision of the Federal Court of Appeal A552-80, leave to appeal to the Supreme Court of Canada granted), then the backlog will be extremely difficult to manage, as each person's application must then be considered by the Cabinet. Further, if the decision is upheld, there will likely be legislative changes. The present system could not handle ongoing applications directly to the Governor-in-Council for any length of time without some major changes in procedure.

Again, if there are changes to the Act, persons already having applied will have to be dealt with in some fair manner. Even if the Supreme Court does not uphold the ruling, the Commission will be extremely hard-pressed to process all of the removals from Canada. There are already thousands of persons who have applied under subsection 115(ii) to the Cabinet and just rescheduling the inquiries relating to these applicants, and trying to locate those who have disappeared or have lost contact with the Commission will further burden an already overloaded system.

In our view, the solution does not lie in increased enforcement. Many persons involuntarily detained by the Immigration Commission have humanitarian reasons for wishing to remain in Canada and such cases must continue to be considered, unless the Commission intends to completely eliminate all humanitarian consideration for persons in Canada. Review of such cases leads to more backlog. Increased enforcement is not a solution in that it fails to recognize the fundamental nature of the problem that presently exists and the humanitarian aspects of it. Many of the illegals in Canada are well-established here, have close family ties and often have children who are Canadian citizens. Removal of these people through a stepped-up campaign to rid Canada of the problem of "illegals" is inhumane and not in keeping with the humanitarian traditions which Canada has so carefully tried to maintain. The response would be not to deport all illegals but rather to come to terms with the present problem of persons already settled here, and to attempt in the future to create effective mechanisms for dealing with the causes of illegal immigration as suggested.

(2) No Major Changes Contemplated

The 1973 Adjustment of Status programme was implemented at a time when a major change was being effected in immigration policy. Persons in Canada after this time were required to apply for landing from outside Canada. The programme was implemented in part because of a perceived unfairness to persons already in Canada who had had the expectation that landing could take place inside Canada and who expected an appeal on humanitarian grounds to the Immigration Appeal Board if their application was rejected.

The current situation is clearly different. It is evidence from the present backlog and significant number of inland applications on humanitarian grounds that the present system is not operating effectively. Some of the key problems are indeed the result of the severe restrictions imposed by the Immigration Act, 1976, preventing the possibility of family reunification, requiring all applications for landing to be made outside Canada, with consequent hardships, further delays, unjust refusals and so on. Thus, major changes which are remedial in nature must now be implemented, both as an integral part of addressing the issue of present illegal immigration and preventing this problem in the future, and as a requisite to the underlying concern, the creation of a more just and humane immigration process.

The restrictions of the Immigration Act, 1976 and other humanitarian concerns have necessitated the institution of discretionary policies for landing within Canada. However, even certain of these policies were, or have become, too restrictive to deal with the fundamental problems. Thus, for example, while applications by Canadians to sponsor their spouse from within Canada had to be accepted and processed, the "humanitarian" standards have become increasingly narrow. At one point, almost all applications were accepted. Then, only those with spouses legally in Canada were being approved and later, only those with pregnant wives were being accepted. The *de facto* resident provisions are presently much more strictly applied than when first introduced. Although the Commission's explanation has been the declining quality of applicants, in our experience, cases which would clearly have succeeded at the outset of the programme are now being refused. Such programmes are an important acknowledgement of the problems in the existing system, but are not satisfactory solutions.

The major changes recommended later in this Submission must be made to effectively remedy the present problem of illegals and the general immigration process. Resolving these major problems, along with the presently effective enforcement system, should essentially resolve the core of the problem of future illegals. At the same time, it is only fair that these persons, many of whom have suffered from these past inequities, should be permitted to regularize their status.

(3) Profile of Present Illegals in Canada

In our opinion, the profile of deportable aliens outlined in the Robinson report does not accurately portray the illegal immigrant. We feel that some comment is in order because of the importance of understanding the type of person in Canada without status. A response by the Minister of Immigration to the problems of illegals should be framed to meet the needs of the Canadian public and the illegals, and an accurate profile of those without status is clearly critical of this.

We are of the opinion that the profile is probably distorted by several factors. Firstly, a significant number of the deportable aliens, if not all (depending on how the profile was compiled), would be people who came to the attention of the Immigration Commission involuntarily, that is, people who were apprehended. The profile points out that the top three nations of origin were Jamaica, Guyana and Portugal, apart from the U.S.A. Citizens from these former three countries are visible minorities in Canada and are more likely to be detected by the police authorities, or otherwise come into contact with the authorities, not by virtue of having for example committed a crime but merely by virtue of being a member of a community more likely to be questioned. One can describe a variety of situations in which a black person from the Caribbean would likely be asked for proof of status, while an illegal from Britain would not. Persons from non-visible immigrant groups, who are without status, fit less conspicuously into the urban context and more easily avoid detection. As well, persons illegally in Canada who have a family in which to integrate, are not likely to come to the attention of the Commission. Family members such as parents and unmarried sisters or daughters who come from societies where they live in the family home until married, may never work in Canada, may have little occasion to leave the home and may most often leave the home in the company of a relative.

The profile leaves out the percentage of deportable aliens who have relatives in Canada. As noted, this is an important factor for consideration. In our experience, while there are certainly illegals here without family ties, the majority appear to have relatives in Canada, often immediate family members, who are already resident in Canada. The profile does not estimate the average length of time that deportable aliens have been in Canada. It is our impression that the majority of people coming to the attention of the Immigration Commission are persons who have been in Canada for less than two years (excluding of course those applying under the present de facto guidelines). The persons who have been here for a number of years are usually well-established, working in their own names and integrated into the community. Thus, they are far less likely to come to the attention of the Commission. However, in the recent past, enforcement mechanisms have been made effective and so those persons newly-arrived are more likely to be apprehended.

(3)(i) Special Programme - Immigration Collective, Law Union of Ontario Recommendation

The learned representatives of the Immigration Collective of the Law Union of Ontario in consultation with numerous church and community organizations, have concluded that a temporary programme should be instituted to permit persons in Canada illegally to regularize their status. This is based on their experience in assessi thepresent crisis and the number of illegals and the consequent importance of responding.

They have concluded that there should be a programme to permit persons presently in Canada to regularize their status here. This is based on their experience in dealing with illegals over a number of years, the assessments of the nature of the problem and the reasons for it, as outlined earlier, and the consequent importance of responding in a humanitarian manner to those presently in Canada without status.

They feel that the most appropriate form of adjustment of status, one which could be easily implemented, would take the approach of the special programmes presently in effect for displaced or refugee communities in Canada. The criteria are similar for all special programmes. Essentially, they provide that persons here with relatives should be permitted to apply for landing immediately and persons here without relatives should be here for a minimum of twelve months and be able to prove successful establishment in Canada. Those who have not successfully established are normally put on Ministerial Permits for one year to establish themselves. The normal criteria for medical examinations and background checks continue to be applied.

The special programmes now in effect are all based on the same general criteria. This uniformity was apparently intended to simplify and facilitate processing. These guidelines will clearly be familiar to Immigration Officers and therefore most easily applied. The reporting period should be of sufficient duration to encourage people to come forward and make application (one year would be recommended). Many individuals will clearly need this time to gain confidence in the programme. The length of time that a person has been in Canada should not be fixed as it presently is in applications under the IS 1.39 guideline. This only encourages people to remain in hiding and perpetuates rather than resolves the present problem. In the context of the causes of the illegal problem, such an approach would be completely inequitable. Rather, a recent and reasonable cutoff date for application under relaxed criteria should be set.

The Immigration Collective of the Law Union are of the opinion that the programme should apply to all illegals regardless of how they come to the attention of the Immigration Commission. Many individuals will clearly need this time to gain confidence in the programme. Undue pressure would be placed on already overextended officers if people were required to report in large numbers at once. It would also clearly be unfair to allow those who do come forward initially to apply, while disqualifying those who wait and are apprehended in the interim. Moreover, disqualification of apprehended illegals is inconsistent with a lengthy reporting period, and the lengthy reporting period is critical to ensure the success of the programme.

The present public debate over an amnesty appears to have created a temporary increase in the number of illegals entering Canada. The Immigration Collective of the Law Union of Ontario feel that there should be immediate action by the Immigration Commission to respond to this in order to settle the issue. Delay only raises expectations further and increases the numbers attempting to remain in Canada without status.

They recommend that a programme be established to permit all persons presently in Canada without status, however they come to the attention of the Immigration Commission, to adjust their status. The programme should extend for at least one year and should utilize the criteria presently utilised by the special programme.

We feel that this suggestion warrants consideration, however, we are not prepared to unconditionally recommend this course of action.

(4) De Facto Residence

RECOMMENDATION NO. 1

> For persons in Canada without lawful status who voluntarily seek adjustment of status now and in the future, we make the following recommendation.
>
> That one particular category be established with broad and clearly defined criteria, for which the primary criterion should be the *de facto* successful establishment in Canada of that person and his dependants.

The present policy as outlined in IS 1.39(3)(iv)(c) of the Immigration Manual is not set out in a sufficiently precise manner. The resulting uncertainty and lack of uniformity in the application of the guidelines is undoubtedly a major factor in the reluctance of illegal immigrants to come forward and apply to adjust their status. The manner in which the guidelines are applied also creates considerable difficulties for legal counsel in the advice they provide to their clients. The criteria should be reviewed and simplified in order that greater certainty and equality of treatment can be ensured for persons who voluntarily seek adjustment of status. The applicable criteria should be (a) a definite period of de facto residence, regardless of immigrant status, (b) financial or other hardship to the applicant or to residents of Canada, which would result from the applicant leaving Canada to apply for permanent residence, and (c) other humanitarian and compassionate grouns heretofore applied.

C. METHODS OF DEALING WITH ILLEGAL IMMIGRATION - PREVENTIVE METHODS

There are two principal methods of preventing much of the illegal immigration to Canada. The first is to allow for effective family reunification, humanitarian settlement programmes and equitable and efficient processing. The second is to maintain an effective enforcement system.

From our experience in assisting illegals to regularize status in Canada, it has become apparent that many have ties with Canada and often these strong familial ties draw them to Canada. Others have come because of broadly-defined political or economic oppression in their home country and often choose Canada because of ties here. The Immigration Commission has responded to certain realities of illegal immigration to Canada based on problems in a particular country by implementing special programmes on an ongoing basis. However, rather than recognize the need to maintain a family reunification programme for relatives who do not fall within the sponsorable class, the Immigration Commission has closed off the viable avenues of legal immigration. The minimal discretionary ability given to overseas visa officers to permit such relative to immigrate to Canada is exercised cautiously and sparingly. We therefore recommend changes in the family reunification policy which would alleviate hardship and decrease the potential for future illegal immigrants as follows.

(1) Prescribed Classes Involving Legislative Change

(a) Family Reunification Selection Criteria

RECOMMENDATION NO. 2

That Regulation changes be made to permit the landing of family class applications inside Canada.

The Immigration Act, 1976 further entrenched the policy that applications to live in Canada permanently or temporarily be processed from outside Canada, however, the Act allows for exceptions to this rule. Classes of visitors can come to Canada without first obtaining a visitor's visa. Workers and students in certain cases can obtain authorizations at a port of entry or inside Canada. The Immigration Regulations prescribe classes of visitors who are exempt from the normal requirements of the Act. The Immigration Act also permits the Governor-in-Council to prescribe classes of persons who may obtain their immigrant visaes from within Canada.

There are, however, no provisions in the Immigration Regulations to permit landing inside Canada for specified classes of persons. Instead, landings inside Canada are processed on an individual basis by way of Order in Council from the Cabinet under subsections 115(1) and 115(2) of the Immigration Act, 1976. The criteria for acceptance are not set out in the Regulations, but in the Immigration Policy Manual in guidelines IS 1.39. Thus, discretion to accept a person for landing is vested in the individual officer, the local Manager and the regional offices of the Immigration Commission. The policy criteria are thus subject to variations in interpretation and inconsistencies in application. The exercise of discretion has been criticized as unfair and discriminatory. These concerns arise from the vagueness of the policy guidelines, with different guideline interpretations from region to region and from office to office, and differing approaches by individual officers. The need to process from within Canada to prevent hardship will continue. Rather than leave to the vagaries of discretion the decision to process family class applicants from within Canada, family class applicants should be prescribed in the Regulations for exemption from the requirement that the visa be obtained outside of Canada. This would relieve against hardship and eliminate the present inconsistencies in the application of immigration policy in cases of family dependency and hardship for sponsorable relatives.

In our experience, persons who could be sponsored to return to Canada within a short period of time generally prefer to apply abroad. However, those who would face length and uncertain delays if processed from their home country are more liable to apply from within Canada, or in some cases, remain in Canada without status for fear of being required to return home to be processed. If family class applications could be processed within Canada, pressure on overseas offices would be reduced and backlogs eliminated so that processing time would become reasonable. If time for overseas processing became reasonable, the number of inland family class applications may well fall below its present level.

It is of primary importance that the recommendations which follow for changes in the family class and assisted relative categories be implemented, not only to significantly reduce further illegal immigration to Canada but also as a means of reassuring these Canadians that their relatives will not be ignored.

There has been a deluge of new immigrants to Canada in the last fifteen years. There are innumerable cases where the majority of the family is settled in Canada. The remaining family members overseas must rely on the discretion of a visa officer to be permitted to reunite with the family in Canada. This discretion is used only in limited situations, where for example there is only one sibling over 21 years of age remaining behind. Even in such cases, the last remaining family member is often refused landing in Canada. Where there may be two or more remaining siblings, there is little possibility of acceptance and no possibility where the remaining sibling is married.

The family nexus is very important in most immigrant cultures. For many individuals, the family is their emotional and financial support system in times of need. The current Immigration Regulations do not permit the reunification of families beyond those of the nuclear family.

Prospective immigrants coming to settle with their families will integrate most easily and rarely require settlement assistance or seek assistance under social service programmes. they are ideal additions to the immigrant community.

For the above reasons, and bearing in mind that one of the principal objectives of immigration policy is the reunification of Canadians and permanent residents with their close family members abroad, the Immigration Regulations should be structured and applied in such a way as to give effect to this principle and the humanitarian concern of family reunification.

RECOMMENDATION NO. 3

That the Immigration Regulations be amended to permit:

(i) the recognition of all children, regardless of the sex or marital status of the sponsoring parent;

(ii) the recognition of a parental relationship where a child is adopted regardless of the age at which adoption occurred;

(iii) that the abolition of the distinction between Canadian citizen sponsors and permanent resident sponsors, including the right of appeal to the Immigration Appeal Board from a refusal of a sponsored application, be considered.

(i) Children

The present Regulations permit a mother to sponsor her child regardless of the mother's marital status at the time of the child's birth. A father, however, is essentially only permitted to sponsor his child where the child is a child born in wedlock. As with any other sponsor, the father may adopt his own child prior to the child's 13th birthday and the child would then be recognized as the father's child.

This Regulation is outdated and discriminatory. Most provinces have implemented or are in the process of implementing legislation which reflects present social standards, abolishing the distinction between legitimate and illegitimate children. The Immigration Regulations should be changed to reflect the changing times. This is particularly important where the regulations impose hardship on a particular ethnic group.

Natural fathers are no less legally responsible for their children than natural mothers. Provincial legislation invariably sets forth legal obligations for natural parents.

The present Immigration Regulations further place an arbitrary, indefensible limitation with regard to the sponsorship of adopted children. Adoptions which are legally recognized should be recognized by the Immigration Act, 1976.

ii) Parents

The current Immigration Regulations permit sponsorship of parents over 60 years of age by permanent residents and sponsorship of parents of any age by Canadian citizens. Provided that a permanent resident has satisfied the residency requirements for citizenship, the distinction made between permanent residents and Canadian citizens does not appear to have a rational basis apart from encouraging permanent residents to become Canadian citizens. The decision to become a Canadian, however, is usually influenced by other considerations such as loss of citizenship in the home country, loss of property rights and so on. Under the current system, a permanent resident who has resided in Canada for three years may then become a citizen and apply to sponsor parents of any age, but a long term permanent resident who for valid reasons has not become a Canadian citizen does not enjoy that right.

Where parents are not yet sixty years of age, considerable hardship can be suffered by Canadian residents who are not citizens but who wish to be reunited with their closest family. The desire to have one's parents in Canada and perhaps younger siblings, should not be obstructed on the basis that the sponsor in Canada is not a Canadian citizen.

iii) Right of Appeal

There is similarly no rational basis to restricting sponsorship appeals to Canadian citizens. The Immigration Appeal Board should examine the legal and equitable aspects of refusals of all sponsorship applications.

RECOMMENDATION NO. 4

That the Immigration Regulations be amended to include as members of the family class, unmarried children of any age.

The present Regulations permit sponsorship of brothers and sisters who are unmarried and under 21 years of age accompanying their parents to Canada or sponsored by their parents. Brothers and sisters who are over 21 years of age or those under 21 who wish to come without their parents to be cared for by elder siblings are not sponsorable. Most immigrant families are very closely knit. Brothers and sisters very often remain in the family home until married and even then often continue to live with the family. In many families, responsibility for the care and maintenance of those most in need in the family lies with the more successfully established family member. We have recommended the expansion of the family class to include at least any unmarried child regardless of age. Married children would still be regarded as assisted relatives.

RECOMMENDATION NO. 5

> That the Assisted Relative category not be subject to selection criteria dependent solely on occupational demand or approved offers of employment. That Assisted Relatives be assessed positively under Factor 5 to Schedule I of the Immigration Regulations if in possession of a genuine offer of employment. That Assisted Relatives be assessed positively under Factor 10 to Schedule I of the Immigration Regulations where there exists more than one assisting family member in Canada. That the distinction in point assessment based on the status of the relative in Canada be abolished.

Assisted Relatives under the current selection criteria do not normally qualify for immigration, unless there exists a positive demand for their occupational qualification under Factor 4 to Schedule I of the Regulations, or, in the alternative, unless the foreign relative has been offered employment which has been approved, or validated, by a Canada Employment Centre or Canada Immigration Centre. Since May 1, 1982, all occupational categories have been assessed as zero demand under Factor 4. Similarly, very few offers of employment have been validated by a C.E.C. or C.I.C. in recent years under Factor 5. The result is that very few Assisted Relatives have been able to immigrate to Canada in recent times.

As noted previously, the narrow family business application provides little relief. Regulation 11(3) which permits approval for landing if the applicant is likely to successfully establish in Canada although he/she does not meet the selection criteria is used even less and is not intended to cover humanitarian situations. While there is concern about economic conditions in Canada, cutting off avenues of immigration to family members within this category is harsh and has not been demonstrated as economically beneficial. Again, particularly within the context of the need for a consistent influx of immigrants to Canada, humanitarian regulation changes are appropriate.

Illegal immigration is encouraged if family members in Canada feel that there is no possibility of ever bringing relatives to Canada legally. There must be some avenues open to permit this. Regulations which permit reunification in cases where the family in Canada is established or the person applying has skills that could be applied in Canada, even though not falling within an occupational demand category, should be implemented.

For these reasons, we have recommended that a positive Factor 5 assessment be awarded to Assisted Relatives who have been offered employment, where the employment offer is genuine and offers reasonable prospects of continuity, regardless of whether the offer could be validated by a C.E.C. or C.I.C.

In addition, we have recommended that the five point assessment available under Factor 10 to Schedule I be awarded to any Assisted Relative who has more than one Canadian family member prepared to assist, to reflect the greater potential for successful establishment of the Assisted Relative in Canada.

We are also recommending that Assisted Relatives be assessed equally under the selection criteria regardless of whether the assisting family member has become a Canadian citizen.

RECOMMENDATION NO. 6

That Joint Undertakings of Assistance by family members in Canada assisting or sponsoring a relative be permitted to ensure a broader commitment to the successful establishment of the relative in Canada.

Undertakings of Assistance which obligate the assistor to maintain and assist the applicant relative for a certain period of time are required for Sponsorship and Assisted Relative applications. At the present time, only a single person or married couple may sign an undertaking. Joint undertakings of assistance are not accepted. The refusal to accept joint undertakings imposes hardship in certain cases, particularly in cases where no one relative can meet the financial criteria because of the number of relatives who are seeking landing.

Both the Immigration Commission and the family in Canada would benefit from the acceptance of joint undertakings.

The broader responsibility for settlement of relatives would increase possibilities of integration and decrease the potential for reliance on outside social agencies. Moreoever, enforcement potential of undertakings would be increased where more individuals are legally obligated.

RECOMMENDATION NO. 7

That before an Application for Permanent Residence is refused, particularly where a sponsorship application has been submitted, the applicant be advised of the outstanding concerns with respect to the Application and be permitted to meet these concerns prior to the refusal of the Application.

Improvements must be made in the present procedure for processing applications for permanent residence, particularly where sponsored applications are involved. Significant numbers of refusals are later allowed on appeal by the Immigration Appeal Board and processed with the consequent delays already mentioned.

In our view, these further delays could be minimized if visa officers took a facilitating role and individuals were given an opportunity to respond to visa office concerns. Once a visa officer determines that there is a problem in an application, the attitude generally is to refuse the application. If visa officers were instructed to present the objections to an application to the applicant and give the applicant an opportunity to respond to these objections prior to refusing the application, many problems would be resolved. For example, the visa officers frequently refuse an application by reason of contradictory information provided by the relative in Canada and the relative overseas. Often these contradictions can easily be explained. Often, as well, the problem involves difficulties in documentation. As a rule, the visa officer will simply reject the application for lack of appropriate documentation, rather than make an effort to assist the applicant in his or her efforts to obtain satisfactory documentation. In addition, there appears to be a tendency in the overseas offices to request documentation in series or to request documentation and then find it to be insufficient after it is provided. At the outset of the process, each visa office should provide a complete list of the documents necessary to satisfy them and further require only documentation which the applicant can realistically be expected to obtain, keeping in mind the lack of proper documentation in certain areas of the world.

RECOMMENDATION NO. 8

That visa officers be informed on an ongoing basis of the decisions of the Immigration Appeal Board and the Federal Court of Appeal and be instructed as to the binding nature of these decisions.

A significant numbers of appeals could be avoided if, on an ongoing basis, overseas officers were made aware of the decisions of the Immigration Appeal Board and the Federal Court. It would appear that many officers may ignore or be ignorant of certain judicial rulings. Officers should be instructed on the principle of *stare decisis* and the binding nature of judicial decisions so that unnecessary appeals might be avoided and resulting hardship minimized.

RECOMMENDATION NO. 9

That the Immigration Commission in conjunction with the Department of External Affairs evaluate and reassess the staffing and office locations of overseas visa offices in order to establish priorities which could reduce discrepancies in processing times for applicants abroad.

The Commission has long been aware of the discrepancies in processing time from visa office to visa office. The differences are significant, varying from several months in some centres such as those in the United States and Great Britain, to several years in other centres. While applications in the United States and the British Isles are dealt with expeditiously, applications from India, the Caribbean and Latin America, to name a few, take unjustifiably long periods of time to process, often up to several years. The speed of processing time has been steadily increasing in many countries.

The significant time differentials stem, in large part, from the failure of the Commission to allocate facilities and staff in relation to demand. For example, there are five immigration offices in the United Kingdom. There are ten offices in the United States. There is only one office in India, and while it may be the third largest immigration office overseas, it services eight other jurisdictions. There are six offices in Africa, one of which services twenty-three other jurisdictions. Of these African offices, two are in South Africa. There are three offices for all of South America. Europe is well represented, there being four offices in France alone and two in Germany.

The nature of the immigration flow to Canada has changed over the past 20 years. Historically, the majority of immigrants were from European countries. The primary immigrant source countries are now in the Third World - India, Latin America and the Caribbean. The Commission has not responded to these changes by relocating existing offices or opening up new ones to meet the demands and needs of the area.

In order to assert that all applicants are treated equally, whatever the country of origin, the Commission must ensure that applications are processed expeditiously and within a reasonable period of time. Priorizing of staffing and office location is long overdue to ensure efficiency as well. In the end, much hardship presently suffered by applicants and their families in Canada could be eliminated.

(2) Changes to Immigration Policy

(a) De Facto Family Members

RECOMMENDATION NO. 10

That the Immigration Policy Guidelines covering family dependency be redrafted to include consideration of de facto family member applicants where hardship would be suffered by the applicant or by family members in Canada if landing were not permitted.

The policy guidelines setting out criteria for family dependency do not deal with de facto family members in general terms. Operations Memorandum OM-IS 110 relating to family dependency appears to be rarely applied. Guidelines on family dependency should be expanded and detailed. Provided there is sufficient proof, close "family" bonds should be recognized on humanitarian grounds; the hardship suffered by de facto families can be just as severe as that suffered by legal families.

(b) Special Programmes

(i) Difficulties with Return to Country of Origin

RECOMMENDATION NO. 11

> That special programmes be implemented as soon as it is apparent that there are significant numbers of persons in Canada with temporary status or without status from countries where the conditions are so serious that they should not be required to return to their country of origin. The concerns of settled communities in Canada for the safety and well-being of their relatives abroad should be taken into account.

The Immigration Commission has implemented a number of special programmes to relieve against hardship for citizens of particular countries where requiring them to return to their country would be harsh given the conditions in that country. Salvadoreans, Iranians, Poles and Lebanese are some of the categories of persons covered by special programmes. The increased use of special programmes to relieve against hardship is most positive. However, the special programme is often implemented only after much hardship has already been suffered. For example, for the past several years, Iranian students in Canada have not been required to return to Iran where minor violations of the Immigration Act were involved. However, until recently, no programme was instituted to assist these students, most of whom did not want to return to Iran. They were only eligible to obtain work authorizations where they could show destitution, and this was also subject to individual officer discretion. Many sought unauthorized employment as the only way to support themselves. The situation in Iran has long been unstable with little likelihood of improving; the use of a special programme at an earlier date could have avoided the hardship suffered by Iranians in Canada over the past two years.

Guyana is a present case in point. The number of Guyanese in Canada has increased as the conditions in that country have deteriorated. Most Guyanese in Canada have close family connections here and thus have sought refuge in Canada from the conditions in their country. There is still no special programme for Guyanese, although it appears that conditions in Guyana as well as the increasing concerns of resident Guyanese in Canada about their families there warrant it. It is essential that the Government respond quickly to international situations and the consequent needs felt in Canada on an ongoing basis so as to respond quickly to needs felt in Canada by persons living here with temporary status or with no status or by family members resident in Canada concerned about their close relatives' safety and well-being abroad.

(ii) Criteria Applied

RECOMMENDATION NO. 12

> That the guidelines covering difficulties with return to country of origin be applied consistently regardless of the applicant's country of origin. The guidelines should be consistently expanded to cover consideration of citizens applying from countries which are democratic in form but not in fact and applications involving difficulty with return to country of origin of a more "personal"

nature. All applications involving difficulties with return to country of origin should be forwarded to the Special Review Committee, except where the applications clearly do not fall within the parameters of the guidelines.

The present policy guidelines IS 1.39 and IS 26 set out categories of persons who may be considered for landing inside Canada because of difficulties with return to their country of origin. The guidelines in and of themselves cover most situations where persons should be permitted to remain in Canada. However, in practical reality, the application of these guidelines is restricted both at the regional level of the Immigration Commission and by the Special Review Committee. The creation of certain types of unjust offences are recognized as sufficient to impose hardship while others are not. As well, there is no consistent principle for determining which countries are considered non-democratic. Countries which may have a facade of democracy but are in reality serious abusers of human rights must also be included for consideration. All persons falling within the parameters of hardship regardless of the country must be included.

Further, there are occasionally situations where an individual would suffer serious hardship because of problems of a more "personal" nature, for example, where moral codes have been broken which may lead to ostracism or physical harm without the protection of law enforcement agencies, or where unjust sexist laws or serious sexual discrimination in the home country exists. The guidelines should clearly contemplate consideration of such cases.

Under present policy, it appears that a regional office may assess an application and decide whether or not to forward the application to the Special Review Committee. Unless the regional determination is positive, the ultimate decision in these cases, where expertise in international affairs is often involved, should be left to the Committee. Only where the case unequivocally is beyond the parameters of the Special Review Committee should the application not be forwarded to the Committee.

D. BORDER CONTROLS AND VISA CONTROLS

RECOMMENDATION No. 13

That cost effective improvements in the documentation of in-bound international visitors at international ports of entry be implemented.

In addressing the problem of border controls, it is important to keep in mind the scope and seriousness of the problem the controls would be designed to alleviate. While a comprehensive electronic system with functional follow-up enforcement mechanisms would undoubtedly reduce some illegal immigration, such a system has significant drawbacks. To be effective, an electronic border control system would have to be complemented by a more effective and comprehensive inspection system upon entry and a thorough enforcement mechanism to follow up non-compliance with exit requirements. The cost of such a system would be staggering.

Further, such a system would undoubtedly impede passenger flow at airports, causing inconvenience to travellers and creating a serious negative impact on the tourist industry. The potential for abuse of such a system, its information-gathering potential and its potential application to residents of Canada causes us great concern in terms of potential civil rights' violations.

It would appear that the problem of illegal immigrants does not warrant the imposition of a system as suggested by the Advisory Council.

A more cost-effective system which would not greatly inconvenience travellers and would not provide the potential for abuse would be one similar to the system in force prior to 1970. The completion of a record of entry form and its subsequent return to Immigration officials upon leaving Canada would not cause inordinate delays or inconvenience to international travellers. This system is presently used by the United States. This system would also be useful in providing a more accurate picture of the illegal problem.

E. ENFORCEMENT

We have made no recommendation for change in this area as we feel there is no serious need for any such change. Some improvements could be implemented but we do not feel the difficulties in enforcement are of crisis proportion.

Since the Adjustment of Status program in 1973, the Immigration Commission has implemented a number of mechanisms to control illegal immigration to Canada and to detect persons who remain here without status. As mentioned previously, the use of distinct Social Insurance cards for non-immigrants has made employers more aware of the question of status in Canada, and illegal immigrants have increasing difficulty in locating and keeping jobs. Such mechanisms as bonds imposed upon arrival, computers at major ports of entry and increased police co-operation have resulted in an effective system of enforcing the provisions of the Immigration Act, 1976 and the Immigration Regulations. As the Issues Paper on Illegal Immigrants pointed out, a reactive enforcement system can be effective and the present experience would seem to point to its effectiveness.

Some additional measures to improve enforcement would appear to be necessary. Clearly, the measures contemplated must be weighed against the potential costs caused by their implementation. Active enforcement on an increased scale could lead to and be perceived by the public as harrassment of visible minority groups. As well, it is worth emphasizing the point made in the Robinson Report concerning immigration and criminality. Immigration offenders are not "criminals" and increased use of police agencies to police the Immigration Act could lead to a perception of harrassment in the eyes of the public. The Robinson Report also points out that increased use of fingerprinting would not necessarily result in increased benefits in terms of enforcement.

The training of enforcement officers, however, does merit more attention, both in view of the passage of the Charter of Rights and Freedoms and the variety of situations in which such officers find themselves. Improved and more comprehensive training would be of use both in terms of respecting the rights of persons apprehended and in the minimizing of potentially hazardous situations.

Another area of concern is the implementation of effective employer sanctions which will permit enforcement action against employers who exploit illegal immigrant workers, without unduly interfering with the employment practices of legitimate employers.

F. PROCEDURAL REFORMS

RECOMMENDATION NO.14

> That persons voluntarily seeking an adjustment of status be permitted to apply anonymously, through an agent, to obtain an initial determination which, if positive, would be binding in the absence of fraud or deception. These determinations should be periodically made available to the public.

The Robinson report suggests that agents might assist illegals in making application to remain in Canada through an anonymous presentation of the application. This method would be supported by the immigrant community and generally, we feel it is a good suggestion. However, given our recommendation that illegals should be processed under a special programme approach and therefore dealt with in an uncomplicated, straightforward manner, anonymity may be unnecessary. Moreover, we feel a real concern that lawyers and consultants may take advantage of the illegal's situation.

The general problem raised in the Task Force Report on Unscrupulous Consultants would be exacerbated by anonymity. The tenuous position of the illegal already leaves the person open to being taken advantage of economically. The danger also exists that the unscrupulous agent, with total control of the situation, could misrepresent information without the applicant's knowledge and thus taint the application. In any case, appropriate safeguards must be added to protect the immigrant against fraud and deception by the unscrupulous agent.

A wider use of existing community services could greatly alleviate the potential abuse of illegal immigrants by unscrupulous consultants. Community agencies could determine the necessity for legal counsel and make appropriate referrals. The provision to the public of the determinations made by the Commission would inspire public confidence and encourage illegals to seek adjustment of status voluntarily.

RECOMMENDATION NO.15

> That Employment and Immigration Canada establish uniform procedures for the adjustment of status decision-making process; and that adjustment of status decisions not be made by the same persons who make enforcement decisions. We recommend the establishment of committees comprised of a broad spectrum of the public and private sectors to review such decisions.

The exercise of the discretionary decision-making authority by enforcement officials is problematic for reasons other than the reason set forth in the Illegal Immigrants Issues Paper. Enforcement officials, by reason of the enforcement-oriented nature of their training and their function within the Commission, perceive the problem of illegal immigrants in a particular way. Understandably, their concern is with the proper enforcement of the Immigration Act, 1976. Adjustment of status decisions should not be made by persons who make enforcement decisions. The consideration of applications by illegal immigrants involves a host of social, political, ethnic and other considerations unrelated to immigration enforcement. In order to properly reflect this fact and to ensure that all the issues are fully considered, regional committees composed of individuals representative of the various communities in the area should review decisions. The concerns of various public and private groups together with their special expertise where the evaluation of hardship would involve cultural consideration would be valuable. Such committees would also provide a sense of balance and inspire public confidence.

V. DETAILED SUMMARY OF SUBMISSIONS

(1) METHODS OF DEALING WITH ILLEGAL IMMIGRANTS - GENERAL COMMENT

De Facto Residence

RECOMMENDATION NO. 1

For persons in Canada without lawful status who voluntarily seek adjustment of status now and in the future, we make the following recommendation.

That one partivular category be established with broad and clearly defined criteria, for which the primary criterion should be the de facto successful establishment in Canada of that person and his dependants.

RECOMMENDATION NO. 2

That regulation changes be made to permit the landing of family class applications inside Canada.

RECOMMENDATION NO. 3

That the Immigration Regulations be amended to permit:

(i) the recognition of all children, regardless of the sex or marital status of the sponsoring parent;

(ii) the recognition of a parental relationship where a child is adopted regardless of the age at which adoption occurred; and

(iii) that the abolition of the distinction between Canadian citizen sponsors and permanent resident sponsors, including the right of appeal to the Immigration Appeal Board from a refusal of a sponsored application be considered.

RECOMMENDATION NO. 4

That the Immigration Regulations be amended to include as members of the family class, unmarried children of any age.

RECOMMENDATION NO. 5

That the Assisted Relative category not be subject to selection criteria dependent solely on occupational demand or approved offers of employment. That Assisted Relatives be assessed positively under Factor 5 to Schedule I of the Immigration Regulations if in possession of a genuine offer of employment. That Assisted Relatives be assessed positively under Factor 10 to Schedule I of the Immigration Regulations where there exists more than one assisting family member in Canada. That the distinction in point assessment based on the status of the relative in Canada be abolished.

RECOMMENDATION NO. 6

That Joint Undertakings of Assistance by family members in Canada assisting or sponsoring a relative be permitted to ensure a broader commitment to the successful establishment of the relative in Canada.

RECOMMENDATION NO. 7

That before an Application for Permanent Residence is refused, particularly where a sponsorship application has been submitted, the applicant be advised of all concerns with respect to the Application and be permitted to meet these concerns prior to the refusal of the Application.

RECOMMENDATION NO. 8

That visa officers be informed on an ongoing basis of the decisions of the Immigration Appeal Board and the Federal Court of Canada and be instructed as to the binding nature of these decisions.

RECOMMENDATION NO. 9

That the Immigration Commission in conjunction with the Department of External Affairs evaluate and reassess the staffing and office locations of overseas visa offices in order to establish priorities which could reduce discrepancies in processing times for applicants abroad.

RECOMMENDATION NO. 10

That the Immigration Policy Guidelines covering family dependency be redrafted to include consideration of de facto family member applicants where hardship would be suffered by the applicant or by family members in Canada if landing were not permitted.

RECOMMENDATION NO. 11

That special programmes be implemented as soon as it is apparent that there are significant numbers of persons in Canada with temporary status or without status from countries where the conditions are so serious that they should not be required to return to their country of origin. The concerns of settled communities in Canada for the safety and well-being of their relatives abroad should be taken into account.

RECOMMENDATION NO. 12

That the Guidelines covering difficulties with return to country of origin be applied consistently regardless of the applicant's country of origin. The Guidelines should be consistently expanded to cover consideration of citizens applying from countries which are democratic in form but not in fact and applications involving difficulty with return to country of origin of a more "personal" nature. All applications involving difficulties with return to country of origin should be forwarded to the Special Review Committee, except where the applications clearly do not fall within the parameters of the Guidelines.

(3) BORDER CONTROLS AND VISA CONTROLS

RECOMMENDATION NO. 13

That cost effective improvements in the documentation of in-bound international visitors at international ports of entry be implemented.

(4) PROCEDURAL REFORMS

RECOMMENDATION NO. 14

That persons voluntarily seeking an adjustment of status be permitted to apply anonymously to obtain an initial determination which, if positive, would be binding in the absence of fraud or deception. These determinations should be periodically made available to the public.

RECOMMENDATION NO. 15

That Employment and Immigration Canada establish uniform procedures for the adjustment of status decision-making process; and that adjustment of status decisions not be made by the same persons who made enforcement decisions. We recommend that consideration be given to the establishment of committees comprised of a broad spectrum of the public and private sectors to review such decisions.

Jeffery P. Harbottle

2057 ST. GEORGES AVENUE, NORTH VANCOUVER, B.C. V7L 3K3

April 25 1983.

Honourable Lloyd Axeworthy,
Minister of Immigration,
Parliament Buildings,
Ottawa, Ont.

Honourable Sir: Re: Mr. W.G. Robinson - Illegal Immigration.

It is a pleasent surprise, as published in the Vancouver Province, March 11, 1983, that you are seeking public comment on one aspect of immigration in Canada, through your special advisor, Mr. W. G. Robinson.

When facts such as 200,000 illegal immigrants are present in Canada now, despite the general amnesty of 1973 which resulted in only 18,000 applying, this big discrepancy provokes many questions. How did this number get through our immigration system? Is it too lax? Is the criteria for immigrant status wrong? The main question - why was it so easy for 200,000 to enter and what steps are being taken to eliminate this flow? What other country in the world would let this happen?

How many of these illegals displaced Canadians in the job market and how many are languishing on the taxpayer's financed welfare rolls? What are these peoples' skills?

As Minister, I suggest these immigrants be assessed, repatriated to their country of origan and apply for entry in the normal manner.

My closing summary is - as our unemployment is at a peak high, resulting in extreme hardships, we cannot afford to be benevolent to outsiders, all immigration should cease, except under careful scrutiny for urgent cases.

In a few days I will be sending a following letter concerning the influx of Asians and Orientals.

Thank you for the opportunity to put forward my views.

Yours very truly,

J. P. Harbottle

Jeffery P. Harbottle.

HEIFETZ, CROZIER & SCHELEW
BARRISTERS AND SOLICITORS

GERALD HEIFETZ B.A.
DOUGLAS C. CROZIER, LL.B.
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TELEPHONE (416) 863-1717

March 18, 1983

W. G. Robinson
Special Advisor to The
Minister of Employment
& Immigration
P.O. Box 2090, Station "B"
Hull, Quebec
J8X 3Z2

Dear Mr. Robinson:

Re: Illegal Immigrants Issues Paper

I enjoyed very much reading your discussion paper regarding illegal immigrants. I thought that your questions were very incisive and reflective.

On page 42 of your report, you make reference to visa requirements as a means of preventing illegals from coming to Canada. I agree with your suggestion. However, I belive that visa requirements should not be imposed on refugee-producing countries where there is no significant immigration abuse. I believe that the imposition of visa requirements on refugee-producing countries effectively block an important escape route for refugees who wish to come to Canada.

Furthermore, I am concerned about immigration officers abroad deciding on the merits of a claim for refugee status by a person who has entered one of our embassies. Whereas immigration officers lack specific training in making refugee determinations, I believe that an erroneous decision could result in a potential refugee claimant coming to Canada illegally whereas he was discouraged by the improper decision regarding his or her claim.

You mentioned in your report that you do not think that long delays in processing family class applications contribute to illegal immigration. Many illegals have told me that the reason that they came to Canada illegally was because they were not prepared to wait as long as they were told to wait before joining their family members in Canada. Consequently, I do think that there is a correlation between illegal immigration and delays in processing family class sponsorship applications.

Perhaps I should have said at the beginning of my letter that in addition to being a lawyer who practises immigration law, I am also duty counsel at the Latin American Community Centre, 9 Milvan Drive, Weston, Ontario. I spend three hours a week at this centre giving summary legal advice. Almost every week, illegals come to the Centre requesting advice regarding their illegal status. I always ask the reason for coming to Canada illegally, and often the answer is that the processing times were too lengthy. Of course, many say that they came to Canada for the express purpose of working illegally.

Yours truly,

HEIFETZ, CROZIER & SCHELEW

Michael Schelew

Michael S. Schelew

MSS:mk

APPENDIX D

HON. MARCEL LAMBERT, Q.C., M.P.
C.R. DÉPUTÉ

HOUSE OF COMMONS
CHAMBRE DES COMMUNES
CANADA
KIA OA6

MEMBER FOR EDMONTON WEST
DÉPUTÉ D'EDMONTON OUEST

OTTAWA, April 28, 1983.

Mr. W.G. Robinson,
Special Advisor to the
Minister of Employment and Immigration,
P.O. Box 2090, Station "B",
Hull, Quebec.
J8X 3Z2

Dear Mr. Robinson:-

In response to the "Illegal Immigrants Issues Paper", I would like to make a number of observations.

As you say, there are a number of illegal immigrants in Canada but no one has been able to place a realistic figure on the numbers. I think the figure of 200,000, which is quoted as a conceivable figure, is radically out of line. On previous occasions when there was alarm about illegals in Canada it turned out that there were about 12,000-15,000 as in 1961. As you point out, some 15,000 - 18,000 accepted the amnesty in 1973. Intuition, and nothing more, leads me to suggest a figure of under 50,000 being in the country at this time. With the elimination of certain countries of high potential for over-stay visitors requiring entry visas for some time this would greatly reduce the number of problem cases arising from those countries.

I would rule out intensified manhunt and expulsion since I believe that you would be creating more hardship cases among the longer term illegals who, in many cases, have married and have Canadian born children. It is axiomatic that notwithstanding its self-asserted power the Department of Immigration cannot do indirectly what it cannot do directly - i.e. deport Canadian born citizens. In the cases where one of the spouses is an illegal, unknown to the other party prior to marriage, then there is a doubly complicating feature and neither the Immigration Appeal Board nor the Federal Courts

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would allow the Department of Immigration to proceed with any deportation under those circumstances. This I have proved by actual cases in the past.

It is a pipe dream to think that a country like Canada would not attract a certain number of illegal immigrants every year regardless of the strictness of immigration entry regulations. Even requirements for entry visas from all countries of the world would result in the end and accentuate "wetback" smuggling operations. There now exist pipelines whereby persons who have been deported from Canada two and three times are back in the country within a matter of weeks from the United States with new documents, etc, etc - especially from Caribbean basin countries.

I would take the position of the Council that "legalization appears to be the only practical and humane approach to dealing with bona fide (i.e. non criminal) illegal immigrants currently in Canada" within the interpretation of the Council.

A general comment is that the operations of the Department of Immigration must be much more open. At the present time it is Immigration who decides what shall be kept secret and what information they shall release. The service has become arrogant, self-serving and decisions of even low level officers are non reviewable. Any discretion at ministerial level has been capricious and all too often politically motivated - e.g. the Polish tourists in Montreal when compared to Polish seamen jumping ship from idle fishing trawlers in Vancouver held in port by a lack of funds to purchase fuel oil. Certain deportees for criminal reasons were admitted to Canada under ministerial permit - the fiction of being given the permit outside of Canada at a U.S. port of entry in Manitoba.

The over-bureaucratic and regimented employment service, which has come to dominate immigration, has distorted the true nature of immigration. Immigration officials who are not qualified to rule on the value of professionals from other countries sit in judgment on capacity of these persons to integrate. The desire of legal, engineering, architectural firms, universities, etc, to engage someone from abroad with a diversity of ideas and skills so as to eliminate intellectual incest matters little to the Immigration

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official. Basically, the whole concept of the Immigration Act and the regulations, designed by the officials for their own interpretation without review from outside, is an essential feature to the whole system.

However, dealing with the question at hand, it may be necessary to deport a limited number of the people who are found not to be acceptable because of participation in a gainful operation of illegal immigration, whether master-minded from abroad or by Canadian residents. It seems to me that it will be wiser to err on the side of generosity. True, there is a good deal of unemployment but there are a great number of jobs still going begging because Canadian born residents feel it beneath their dignity to do the jobs that have to be done. Floors have to be swept, vegetables have to be cleaned, dishes have to be washed, and there are a lot of other jobs which immigrants with a work ethic are quite prepared to do. They don't depress minimum wages. Wages at twice the present level would not attract most Canadians to do those jobs: "these are beneath their dignity". One may fulminate against the question of immigrants as a source of cheap labout but it has been ever thus, and will continue to be so. There is no useful purpose gained in ranting away at it from the rooftops.

Insofar as those people who are allowed to stay, I do not agree with the Council's recommendation that there should be a six years limbo or purgatory. The period is far too long, and should not exceed three years - if that. Many of these people have been in the country for six to ten years. They likely have no record of any criminal activity outside of the Immigration Act or their statutory violations. They have worked hard and have made progress in this country. They have given visual proof of their capacity to be a good immigrant regardless of the views of some Immigration official, quite imperfectly trained to assess these capabilities. I would give illegals one year, eighteen months at most, to come forward and correct their status, as to name, etc, etc, accepting those who are bona fide - i.e. who did not participate in some fraudulent scheme for gain to enter Canada.

Unless I could be guaranteed that Immigration officers, both first and second line, would be far better trained in screening the public and particularly in their manners all too often displayed, then there could be a closer examination

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of why people enter Canada. I do, however, impose very serious objections to the actions of almost semi-literate Immigration officials who query world renowned experts in their particular field who come to Canada to speak at seminars, conferences or as guest speakers and being cross examined as to the true purpose of their visit to Canada, their conference papers examined in detail, all for the supposed reason as to whether there were not a Canadian who could do as good a job. What utter balderdash and an insult to that whole category of people. I suppose Canadians, expert in their field on the reverse process should, however, not receive similar treatment!

I do believe that the visitor's visa in a passport or in some form would clearly indicate in bold characters that the visitor's permit would immediately be forfeit if a) the holder were to engage in gainful employment while within Canada; b) apply for landed immigrant visa, with ministerial discretion exercisable in cases of bona fide marriage and some exceptional circumstances; c) and, naturally, if it is over-stayed with reasonable access to renewal or extension.

I believe the numbers of over-staying visitors could be much more carefully controlled if there were a record of departures from the country by persons in possession of visitor's permits. Access to a computer control system would greatly facilitate this type of operation. This, however, would do nothing for U.S. citizens entering Canada for short periods, in the same way that Canadians can enter the United States without a visa or passport for short periods. Presumably the same could be said from Great Britain, although the incidence of this is much less.

I am not in favour of case by case discretion, at least not at the present time, on the basis of the arguments put forward. I believe the discretion which carries with it implications of uneven consideration would make most illegal immigrants reluctant to come forward in fear that the discretion would not be exercised in their favour, as it might in the case of their friend or neighbour.

A six years probationary period would mean that these individuals would hold a series "9" social security card, which practise and experience has shown guarantees the holder thereof a below normal salary and job opportunities all the time that person holds the card. The six years limbo or

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or purgatory is to be condemned out of hand, as creating more unforeseen problems and consequences than contemplated at first sight.

There are undoubtedly a number of parts on which I could again comment but, in summary, I would favour as generous as possible amnesty of persons in Canada illegally as of a date but close to the date of the announcement of the decision, with a better control system on exits from the country. Unless I can be guaranteed that Immigration officials will be better trained in the handling of persons entering the country, I would not impose visitors to this country to their tender ministrations. Presently far too many people get insulted and with very good reasons.

Yours sincerely,

Marcel Lambert

Marcel Lambert, Q.C.

APPENDIX E

December 30, 1982

Hon. Lloyd Axworthy
Minister of Employment and Immigration
House of Commons
Ottawa, Ontario

Dear Mr. Axworthy

I feel I must register a protest concerning the proposal to legitimize the thousands of illegal immigrants in this country. This type of proposal is symbolic to me of one of the serious things wrong with this country. We have so-called leaders with no backbone.

The guiding philosophy of those who advocate "amnesty" for illegal immigrants is that the numbers are so large that it would be hopeless to try and enforce the law against them. This same philosophy guides the actions of government in dealing with labor unions. Get enough of a mob on a picket line and there will be no prosecutions for subsequent illegal actions.

Why should illegal immigrants be allowed to attain citizenship in Canada? What about the immigrants who play by the rules? Is it fair to them to have a bunch of cheaters suddenly jump ahead of them in line? What about our system by which we determine who is a suitable immigrant and who is not? Is that system not rendered meaningless by wholesale amnesty to cheaters?

We have too much in this country of politicians winking at the law of the land because it is inconvenient or difficult to enforce. Sure it is tough to enforce immigration laws because each case represents real people and their hopes and aspirations. But enforcing the law is what you are paid ample money to do. You are not paid by us to wink at the law or decide arbitrarily which laws you will enforce and which you will ignore. We have no desire in this country for the rule of men over the rule of law because under such a system there is no protection for any of us from arbitrary measures.

When you flirt with the notion of waiving the law because it would be tough to enforce (not to mention the sob stories that would leap from the pages of papers such as the Toronto Star), you are stepping into the dangerous area where the rule of men prevails.

There is no good reason for giving illegal immigrants amnesty. They came here in defiance of our law and they must bear the consequences of that defiance as would be the case for any native-born Canadian who broke the law. Enforce the law, Mr. Axworthy. Change it with open debate in Parliament, if it is unenforceable. Do not, however, arbitrarily decide when the law will be enforced and when it will be ignored. If you do that you become a far greater danger to our society than any number of illegal immigrants.

Yours sincerely,

John Dawell

APPENDIX F

Hon. Lloyd Axworthy,
Minister of Employment & Immigration
House of Commons,
Ottawa.

Dec. 13, 1982

Dear Mr. Axworthy,

It is exceedingly annoying to read of an amnesty being considered for thousands of immigrants who are living in this country illegally. It is also highly likely that many of them came here with this express purpose in mind.

I have a sister and brothers in Scotland who could not receive even preliminary consideration at Canadian immigration recently, although they are educated to 'O' level standard.

The utter bankruptcy of such an amnesty only leads me to tell my family to abandon the straightforward, honest way of trying to come to Canada -- those who take the illegal route obviously fare much better. What you are doing is enforcing the rules for the legitimate applicants, and relaxing or ignoring the rules for those who flout the law. Some policy!!!

If you are telling me that there is no place in Canada for my such as my brothers and sister, but instead we will have, let's be frank, large numbers of Third World people most of whom are poorly fitted to take a decent place in Canadian sodiety, then I can do no more than re-think my longtime loyalty to the Liberal Party at the next general election.

Yours truly,

Geoffrey McCaffrey
84 Westwood Lane,
Thornhill, Ont.
L4J 1P9

APPENDIX 6

HOUSE OF COMMONS
CHAMBRE DES COMMUNES
OTTAWA, CANADA
K1A 0A6

URSULA APPOLLONI, M.P.
YORK SOUTH-WESTON

OTTAWA (613) 992 3128
TORONTO (416) 243 0900

OTTAWA, December 14, 1982.

Hon. Lloyd Axworhty, P.C., M.P.,
Minister of Employment and Immigration,
House of Commons,
Room 135 E.B.,
OTTAWA, Ontario
K1A 0A6

Dear Mr. Minister:

I have grave misgiving concerning the proposed amnesty for illegal immigrants and feel that such a step would be greeted with dismay by the thousands of people in my Riding who patiently waited their turn to come to Canada in the first place.

I am also concerned that an amnesty could provide a signal for countless other nationals to "try their luck", thereby making a mockery of the selection criteria.

Sincerely,

MRS. URSULA APPOLLONI, M.P.

UA/gn

Telephone 1 (705) 326-5333 – 326-5445

Orillia and Simcoe County
Affirmative Group

Incorporated 1979

32 Matchedash Street, North, Orillia, Ontario L3V 4T5

April 3rd, 1983

Mr. W.G. Robinson,
Special Advisor to the
Minister of Employment and Immigration,
P.O. Box 2090,
Station "B",
Hull, Quebec
J8X 3Z2

Dear Mr. Robinson,

A copy of the "Robinson Report" reached our desk on March 30th. Despite this very short period we wish to make some observations which we believe may be a value to those wrestling with the making of policies dealing with this problem.

Thanking you,

Yours truly,

Aileene M. Williams

Ms. Aileene M.Williams,M.Ed.,
Co-ordinator

AW
encl.

A Response to the Report entitled "Illegal Immigrants"

Issues Paper - February 15th, 1983

by Mr. W. G. Robinson

The response contained in the folliwng reflects views which have emerged as a result of reading the Councils report and also the report of W.G. Robinson, and from direct contact with illegal immigrants mainly of West Indian origin.

1. On the scope of the problem

We believe the estimate of 200,000 illegal immigrants in Canada to be a figure which is totally out of proportion. The estimate is in fact widely exagerated. However, because of the number of children involved, that is children who are here in Canada illegally because their parents are (1) illegal immigrants, or are (2) legal residents of Canada but who did not (a) declare their children on gaining legal entry, and are now afraid to declare those children for fear of enforcement proceedures or (b) children whose "parents" was a relative in their country of origin, but who was not deemed to be a "son", or "daughter" of that relative by Canadian standards, this number - the number of illegal immigrants in Canada could be as high as 120,000 persons.

2. We have observed that there are persons in Canada illegally who did not respond to the amnesty call in 1973; because of lack of knowledge, confidence of the system, or the plain belief that "they were alright". This is a small group we believe but non-the-less a viable group.

3. The majority of illegals in Canada since 1973 from such countries as Jamaica etc; are individuals who (1) at one time had work permits which extended over several years and were later terminated after those individuals, had established roots eg. lovers, husband, children, homes in Canada, or

(2) are individuals who were allowed in Canada after
    (a) hearing at the port of entry with subsequent appeal board hearings. These persons were given work permits which had no date for expiration leaving the individuals to assume their status in Canada was assured. Again these individuals have established their home in Canada.

(3) Individuals who were last family members eg. last son, daughter etc who although over age 21 was still completely dependent on their parents, since the extended family relationship with (especially for Jamaica) what seems to be a dominant matriachal form of life style still exists.

Recent illegal immigrants from Jamaica appear to be consistent in one detail. They came to Canada to escape a voilent situation in which that country teathered on the brink of civil war for some years. These victims are not refugees in law but are such in fact and now in fact create one of the most persistent illegal type of individual.

Legal Aid Clinics, consulting services, and various organizations who deal with illegal immigrants although obviously in a position to give a more accurate account of numbers of illegal immigrants in Canada are limited in how effective they can be in this area since (a) there may be a perception on the part of individuals that the agencies are "fronts" for Government enforcement

(b) the agencies themselves may become targets for forced co-operation either through "voluntary" means coerced means or force; thus making them, that is the various agencies ineffective in the work they attempt to do.

The councils concern that illegal immigrants may in fact increase in the future due to worsening economic conditions in the third world, cannot in our opinion be sustantiated. However, the escalation of voilence in third world countries where there are large proportion of residents in Canada from those countries may be a cause of concern. Unfortunately this problem may not be particularly evident when dealing with know repressive regimes, as there are provisions made within the Act to cover such eventualities. Problems does arise where the countries in question are so-called friendly western powers who non-the-less have engaged in a course of represssion for their citizens, while struggling towards a goal of 'so-called' 'democracy'. It is evident that some measures must be provided in the Act, regulations, policies, etc. to deal with these eventualities if Canada, is to secure itself against a large influx of illegal immigrants from countries without visa requirements.

4. In addressing the why's of individuals becoming illegal in the system, the follwing is noted.

(a) We have no information on misinformation being given by consultants. Perhaps this problem is geographical and as such ones exist in certain areas of the world.

(b) In our experience individuals are much more likely to become illegal immigrants if they are unsuccessful applicants for immigration for whatever reason.

(c) We believe lack of education is also a vital reason why people become illegal immigrants in Canada. There is at present no system set up to genuinely educate the public either here in Canada, or in other countries about Canadian Immigration policies. This is certainly not done at visa offices outside of Canada. The information given on Canada portrays its economic success, its beauty and everything that it has to offer rather than to give both sides of the picture. Visa officers are not trained in being Ambassadors for Canada that is there is no education attached to their role. Rather, they act as gate keepers who are keepers of enormous wealth. This creates a false impression for would be immigrants. There should be a system to implement genuine education both here in Canada and in other countries, which would document Canada's immigration policy.

(d) Enforcement controls on entry to Canada. There is at present genuine concern being expressed with regard to what is seen as discriminatory action at Toronto International Airport on the part of Immigration Officers. These individuals are the first impression makers to a visitor coming into Canada. The "enforcement" component of their job does not in fact make them the ideal welcomers to this country. None-the-less it is recognized that a measure of control must be exerted; which would not leave the impression of one entering a police state.

We believe in this very sensitive area there should be much discussion before any change in the existing policy is recommended. A starting point may be:

(1) discussions with various governments whose subjects present the most problems of illegal overstay to Canada.

(2) Automatic non-entry of would be visitors who (a) do not have any close relatives in Canada and
(b) who cannot show necessary funds to cover the cost of being in Canada for the time they state.

To enter such individuals must have visas for entry irrespective of country of origin.

On the question of Amnesty

While it would be relatively easy to declare a general amnesty, there must be serious considerations given to this before such a move is made. Some concerns we feel should be addressed are as follows.

1. The measure of psychological settlement this individual has achieved since coming to Canada.
2. The measure of economic and social settlement achieved in Canada.
3. How the individual has intergrated in the community. This is not to say that the person has given up his culture; but that there is sufficent adaptation to the Canadian culture, that there will be no incongruerence on the part of the individual and the community. That is can the individual and the community live in peace; or will the individual be a constant problem in his community. Perhaps there will be a need for the visa office to verify the character of these individuals.
4. The attitude of the individual with regards to his/her contributions to the development of Canada.
5. The length of time the individual is resident in Canada. A recommended period of 5 years should be the stated policy we believe, however, there should be provisions made for persons who have been in Canada for three years or more who have obviously abandoned their home abroad, and who have established a home in Canada.
6. The degree of family connectedness should be taken into consideration. Where an individual would be a last remaining family member in country of origin, where all family members of the nuclear unit is in Canada, where the individual is married or lives in a stable commonlaw relationship for at least 2 years without a child, or where a child is involved a relationship of at least one year, with the partner taking on full responsibility for both the illegal partner and the children, without any chance of receiving Government Assistance for at least 5 years, should all be considered.

Although we do not feel a general amnesty or even a conditional amnesty as outlined by the report would be in the best interest of all concerned we do feel that an extension of policy as outlined in 1.S.1.39 would be very effective. This would in effect set up some controls for qualifying for getting landed status; while at the same time eliminate those who obviously have manipulated the system for their own benefit, and who would not qualify except for the controls of time, and a clear police record.

We are therefore advocating a system of "case by care' discretion. Here Legal Aid clinics, consulting services, and so on can be of value. Since these agencies can be a front line contact agencies for illegal individuals. These agencies can then present to the Immigration department a write up of these cases which can be accepted or rejected without the involvement of the client.

In all cases except where there has been criminal violations of other laws voluntary submission should not result in prosecution. Further, an individual who comes forward voluntarily but who does not qualify on all points, providing those points are redeamable should be allowed to fulful the necessary conditions which would allow them to qualify in a set period of time.

If, however, such individuals fail to qualify whether due to:

(a) poor record in the past,
(b) educational inability, then discretion should be made about advising the would be immigrant to return to country of origin, providing no Canadian citizen, or landed immigrant would be affected.

In using discretionary powers, there should be an automatic apprasal given of a clear police record where an individual has not been involved with the police for offences which would not warrant penalties of more than 6 months in jail or fines of $200 less than in Canada. For offences in countries of origin which warranted stiffer penalties than the above, the Commission should take in consideration how those crimes would have been dealth with in Canada, the length of time that has elapsed since the commiting of such crimes, and the rehabilitation of the individual before decision which will affect the individuals residency are made. Here it is expected that the commission would bear in mind that even 'so-called' democratic regimes carry out repressive punishment which are not consistent with the crime. We believe the present base set down in Immigration policy 1.S.1.39 is a sound one; which can be expanded to deal with the illegal immigrant problem.

The fact that the Immigration Department and the Minister of Employment and Immigration must be fair and be seen to be fair, poses many problems. An amnesty every 10 years will create a problem. It will also be impossible to say to anyone there will not be a further amnesty since everyone knows there will be another. Canada must also be concerned about the type of individuals who would opt for the amnesty route; whether these individuals would qualify in a selection process if they had followed the normal channels. Further, an amnesty does make a mockery of the law and the application of that law.

In Land Controls/Enforcements

Proactive enforcement in Canada will bring with it voilence and civil disorders. The present system is a workable one without too many abuses from authority figures. If the system is placed on the level of a "police state control" then unfortunately anyone is liable to be hurt in it. This will mean that visible minorities will be targeted for harrassment both from citizens and officials alike. This is a dangerous move which could hardly be tolerated by the Canadian public. The matter of illegal immigrants does not affect anyone enough to warrant such extream measures.

These are some of the concerns and suggestions we have in this matter. If you have any questions or would like to discuss this further please do not hesitate to contact us.

Thanking you,

Yours truly,

Aileene H. Williams

Ms. Alleene M. Williams,M.Ed.,
Co-ordinator

AW/

APPENDIX I

McMASTER UNIVERSITY
Department of Sociology
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Telephone: 525-9140 Ext. 4481

April 20, 1983

Mr. W. G. Robinson
Special Advisor to the Minister
of Employment and Immigration
P.O. Box 2090
Station "B"
Hull, Quebec
J8X 3Z2

Dear Mr. Robinson:

Thank you very much for having sent me your "Illegal Immigrants: Issues Paper" (February 15, 1983) and solicited my views upon it. I assume that my views have been solicited because of my publication of two academic articles on Canadian refugee policy (in Canadian Public Policy, vol. 6, no. 2, 1980, and Canadian Journal of African Studies, vol. 15, no. 1, 1981).

In that capacity, then, I draw your attention to the possibility that some illegal immigrants in Canada may in fact be people who could become Convention Refugees. They might not have applied for refugee status because of ignorance of our laws, or because of fear of harsh judgements by the Immigration Appeal Board. As I have already told the Minister in a previous letter, I was appalled, when I conducted my research in 1979, at the ignorance of political repression abroad shown by members of the IAB. Refugee applicants were criticized, and in some cases refused out of gross ignorance; for example, in one case Board members would not believe that the Chilean police would concern themselves with the political activities of a high school student. Whatever is done about the "illegals" as a group, potential refugees should be encouraged to apply for status, and the Board should be composed of more enlightened, better-informed people. Moreover, account should be taken of the fact that a visa requirement was imposed on visitors from Chile; since application for a visa in Chile is dangerous for many people, this may have encouraged more potential refugees to enter Canada illegally.

With reference to illegal immigrants whose children are Canadian citizens, I draw your attention to Article 23.1 of the International Covenant on Civil and Political Rights, (to which Canada is a party) namely, "The family is the natural and fundamental group unit of society and is entitled to protection by society and the State". Canada is also party to the International Covenant on Economic, Social, and Cultural Rights, whose article 10.1 states "The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children". In its narrowest

.../2

interpretation, the family consists of parents and children. I fail to see how the Canadian government can possibly be exercising its responsibilities, under international human rights law, to those of Canada's citizens who are dependent minors, if it deports their parents merely because they are illegal immigrants. Whatever the general problem of equity and fairness may be, it appears to me that there is a sound basis in law for extending an amnesty to illegal immigrants whose dependent children are Canadian citizens.

As a general comment, may I say that I am opposed, as a citizen, to the "targetting" or "raiding" of groups likely to harbour illegal immigrants, to extension of fingerprinting, and to the imposition of compulsory, universal employment documentation. Canada is an open, free country. The problem of illegal immigration in this country is certainly not large enough to warrant such infringements on our precious freedom.

Yours sincerely,

Rhoda Howard

Rhoda Howard, Ph.D.,
Associate Professor.

RH:cd.

1.38 CHILDREN OF UNMARRIED PARENTS

1) A male may seek to sponsor, for admission, his illegitimate child who may, in some cases, be admissible under R4(g). In recognition of one of the Act's basic objectives (i.e. family reunification) and also of the fact that affinity and affection for a child is natural to both the father and mother, an officer should make a recommendation (see 1.46) for an exemption under A115(2) where:

   a) the child would be admissible under R4(b) but for his illegitimacy;

   b) admission is in the child's interest;

   c) the sponsor has always acknowledged paternity;

   d) the sponsor has always contributed to the child's support, development and welfare;

   e) adoption is proposed and feasible where the child is under age thirteen;

   f) all other circumstances favour the child's admission, including the mother's or legal guardian's agreement.

2) Where these conditions cannot be fully met, consider the case's intrinsic merits and proceed accordingly.

3) Where approval in principle is given the recommendation for an exemption, and the child is under age thirteen, the sponsor is required to obtain from the child welfare authority of the appropriate provincial government, a written statement indicating approval of proposed arrangements for the child's reception and care. Where the child is over age thirteen, but under the age of majority, which varies by province (see 1.17), provincial approval is required.

1.39 LANDINGS IN CANADA

1) Legislative Requirements

A9 requires that every immigrant make an application for, and obtain, a visa before appearing at a port of entry. This requirement can be considered to be the cornerstone of Canada's immigration policy and reflects the Act's intent that persons should, except in prescribed cases, make their applications abroad. There is, however, a need recognized by the law to extend a privilege and, in some instances, a right to make an application for landing in Canada. The law allows for such an application in four of its provisions.

   a) A38(2) allows the Governor-in-Council to authorize the landing of any person who, at the time of landing, has resided continuously in Canada for at least five years under the authority of a Minister's Permit issued under the present immigration law or under the present law and any previous immigration law.

b) A117 allows the Minister to authorize the landing in Canada of any person ordered deported under authority of the Immigration Act as it read before November 13, 1967, where this order has not been executed.

c) A124(1) provides a right for persons to make application for landing in Canada where they were members of a prohibited class in Section 5 of the previous Immigration Act, are not in an inadmissible class under the present Act and are holders of Minister's Permits issued for a period of twelve months.

d) i) A115(2) enables the Governor-in-Council to facilitate the admission of persons for reasons of public policy or for compassionate or humanitarian considerations. Here, and with reference to A9(1), the Governor-in-Council would prescribe persons who may be landed in Canada without having applied for and obtained a visa abroad.

ii) A115(2) means that officers may, and should, identify cases for the Minister to recommend to the Governor-in-Council when the proper and strict application of other sections of the Act would be against the national interest of Canada or would constitute, for humanitarian and compassionate reasons, an undue degree of hardship.

2) Exercise of Discretionary Powers

a) It is implicit in the exercise of any discretionary power, whether that of the immigration officer who makes the initial recommendation, the Minister who makes the recommendation to the Governor-in-Council, or the Governor-in-Council which, in law, makes the decision, that decisions are made on a case-by-case basis. It is important therefore, that officers realize that these guidelines are not intended as hard and fast rules. They will not answer all eventualities, nor can they be framed to do so. Officers are expected to consider carefully all aspects of cases, use their best judgment, and make the appropriate recommendations.

b) As the great majority of immigrant landings from within Canada will have their basis in compassionate or humanitarian considerations, usually involving a close family relationship with a Canadian citizen or resident, it will be useful to have some terms of reference.

c) Humanitarian and compassionate grounds exist when unusual, undeserved or disproportionate hardship would be caused to a person seeking consideration, or to persons in Canada with whom the immigrant is associated, if he were not allowed to remain in Canada while his application for landing is in process.

d) When evaluating a request to apply for landing in Canada, consideration should be given to the person's reasons for not having applied abroad. These reasons could be a deciding factor in making a judgment as they could very well affect the humanitarian considerations of the case.

e) In addition, officers may encounter cases where, as a result of an application for landing in Canada, information comes to light which indicates that enforcement action should be taken against either the applicant or the sponsor. This could occur in situations where the applicant was not a dependant at the time of the sponsor's admission to Canada and is inadmissible for criminal or security reasons, in which case enforcement action should be taken against the applicant. Enforcement action might also be taken against both the sponsor and the applicant if the latter was an inadmissible dependant when the sponsor applied, and if the applicant's existence was not reported at that time. Officers will therefore be called upon to examine all aspects of the person's request, taking into account the guidelines, and make an initial decision to either proceed favourably or to recommend enforcement action where such action is clearly warranted.

f) In making a judgment leading either to a (favourable) recommendation for admission by special regulation (by the Governor-in-Council) or to a negative recommendation, officers will consider and weigh hardship from case to case. The following advice will concern itself (in 3) following) with situations likely to involve hardships, and general considerations regarding "hardship" itself and, (in 4) following) with reasons of public policy.

3) Situations likely to involve undue or unusual hardship

a) Family Dependency

i) Hardship would likely result if landing is denied to a would-be immigrant who is normally a member of the family household of a Canadian citizen or resident, established in Canada, who is dependent for physical, emotional or psychological support upon this family, and whose return to the country of origin is not merely a matter of inconvenience or affordable financial cost.

In appraising the dependancy, officers will consider the would-be immigrant's relationship with his family in Canada, his age, his health, and his financial and emotional self-sufficiency.

ii) Examples of such cases which could be expected to merit a recommendation for admission from within Canada are:

A) Children under the age of 18. "Children" includes those legally adopted, abroad or in Canada. (See guidelines on adoptions IS 2.12.)

B) Sons and daughters between the age of 18 and 21 whose admission would be sponsorable if they were abroad, who have previously met the requirements for a Canadian immigrant visa, and who are still dependent upon their family.

C) Parents and grandparents of Canadian citizens and permanent residents where their well-being, physical or mental, depends on being with their family in Canada and where a return to their country of origin for purposes of application for an immigrant visa would impose a hardship in relation to their physical or mental health.

D) Spouses of Canadian citizens or permanent residents, recently married abroad or in Canada, where their marriage is one of substance and likely duration and the immigration officer is satisfied that it was not entered into solely to acquire permanent resident status in a preferred class. Hardship on separation could hardly be considered to exist in the spouse-relationship if it came into being or exists solely for immigration purposes. (See guidelines on marriages of convenience.)

E) Children, applying under R4e), who have become orphaned or are alone as a result of the recent death of their parents or guardians and who have no immediate relatives in their country of origin who could provide for their support while awaiting the processing of their immigration applications.

F) Other extended relatives (for example, a widowed sister-in-law) of Canadian citizens or permanent residents with whom there has been a strong and continuing relationship over an extended period of time as de facto family members, where their physical or mental well-being is dependent on being with their family in Canada and where a return to their country of origin for purposes of application for an immigrant visa would be harsh in terms of their physical or mental health.

iii) Examples of cases which might also merit a recommendation for facilitation of admission from within Canada are:

A) Sons and daughters over the age of 21, arriving in Canada within six months of their 21st. birthdays, who are still dependent upon or are an integral part of the family unit, who had already received immigrant visas within the previous 12 months as dependants or as members of the family class and who were unable to become permanent residents of Canada within the validity of those visas through no fault of their own.

B) A son or daughter, unmarried and over the age of 21, who is the last remaining family member due to the death or migration of other family members where all other family members have been in Canada at least one year and who, due to their dependance, have been unsuccessful in adjusting financially and emotionally to their separation from the family.

C) Parents of any age, especially those widowed or otherwise alone, and children of any age of Canadian citizens or residents who, due to ill health, infirmity or other reason are not self-sufficient and whose remaining in Canada is not only in their best interest, but would also be in the emotional or financial interest of the family in Canada.

D) A spouse of a Canadian citizen or resident married in Canada, who may have married in Canada for immigration purposes (that is, to acquire permanent resident status as a member of a preferred class) but where a child of the union is now expected, or where the well-being of a child in Canada would be negatively affected if separated from the parent.

E) Spouses of Canadian citizens or permanent residents whose separation resulted from their spouse's preceding them to Canada, who were previously examined abroad and whose application in Canada is as a result of some recent adverse change in family circumstances.

iv) Examples of cases which would likely not merit a recommendation for facilitation of admission from within Canada are:

A) Parents or grandparents of Canadian citizens or residents whose admission may well be sponsorable, but who are not infirm and whose return to their country of origin to apply for visas is feasible and would only cause them inconvenience and inconsequential financial burden.

B) Younger parents of Canadian citizens where they do not "stand alone", where they are not infirm of mind or body, where they are capable of looking after themselves: where their applications to apply for landing from within Canada is for convenience, pure and simple.

C) Spouses of Canadian citizens or residents who married in Canada and where there is evidence that the marriage took place solely to further the persons' admission from within Canada. (See special guideline on marriages of convenience.)

D) Children between the ages of 18 and 21, who have not previously been examined for immigration purposes, who have been under the care of persons other than their parents for an extended period of time, and who cannot be considered emotionally or financially dependent upon those parents in Canada.

E) Persons other than those with severe physical or mental impairments, who have a number of dependants abroad and whose length of stay in Canada is so short that no permanent separation of the family has likely occurred.

b) Difficulties with Return to Country of Origin

Hardship would likely result if facilitation is denied to a would-be permanent resident who, on voluntary or forced return to his country of origin, would suffer penalties of an inappropriate degree or danger to life. The credibility of claims respecting the existence of unusual or undue hardship must be well based, and special knowledge of the changing international situation is required for their assessment. Hence the Special Review Committee, in Ottawa, has been set up to review:

i) all applications seen by the Refugee Status Advisory Committee and found not to be refugees, but where some humanitarian considerations may nonetheless exist,

ii) applications referred by field officers involving applicants from any country where any special refugee or humanitarian program exists (e.g., Ethiopia),

iii) applications from nationals of any country which has severe exit controls,

iv) applications from any country where field officers wish to have special guidance.

c) Long-Term Commitment to, and de Facto Residence in, Canada

i) There are persons who, although not Canadian citizens or residents nevertheless, have been in Canada so long and are so established here that, in fact if not in law, they have their residence in Canada and not abroad. Hardship may result to such persons and to Canadians or Canadian residents who are members of their families, if they were required to leave Canada in order to seek a visa to return to Canada (legally) as immigrants.

ii) Judgment as to hardship in these cases will be sensitive. The following are among the factors which should be considered in deciding whether or not a recommendation for facilitation of admission from within Canada should be made:

A) How long has the person been in Canada and what are his family ties here?

B) Is he well established here?

C) Have he, and his family, had good civil records while in Canada?

D) Does he have a residence or a family home outside Canada?

E) Would he be selected as an immigrant if he were to apply abroad?

F) Would the necessary sojourn abroad result in an unnecessary financial hardship, possible loss of employment, or an educational disruption for any children the applicant may have?

G) Did he declare his intention and come forward within a reasonable period of becoming aware of his lack of status, seeking landing in good faith, or is the request made after some conflict with immigration law?

iii) Examples of cases which would likely merit a recommendation for facilitation from within Canada are:

A) Persons who entered Canada legally and have been living in Canada for about 10 years or more, believing themselves to be Canadian residents or citizens but who were never legally landed. These persons will have led normal lives and have not involved themselves in any serious violation of Canadian law. Their lack of status will normally have come to their, or our, attention through some apparently unrelated action, such as a passport or social benefit application.

B) Persons who have held employment authorizations or similar status for a continuous period of, say ten years or more and who have long-term prospects for continuation of their economic basis in Canada. These persons will have established homes in Canada, may have raised and educated children here; their children may be Canadian citizens by birth. There would be no real residence abroad where these persons could reasonably be expected to apply for immigrant visas should they wish to become landed immigrants.

iv) Examples of cases which may also merit a recommendation for landing in Canada are:

A) Persons who have been in Canada a shorter time, say five years or more, who have held employment authorizations continuously for this period, who, as in 3)c)iii)A) above, have their de facto residence in Canada and who have proven to be responsible residents.

B) Persons who may have entered illegally or who have been without status since their legal entry, who have demonstrated as a result of their successful establishment that they warrant special consideration and who have come to the Commission's attention voluntarily. An individual's length of residence in Canada might well be taken into consideration when determining whether or not to deal with such an application.

C) Dependants of applicants in Canada who remain abroad and turn 21 years of age before the processing of the visiting parents in Canada is completed. Such dependants are to be processed as if they had accompanied the parents to Canada. To deny them the benefit of this policy would constitute punitive action against the dependant who remained to be examined abroad, rather than against the parents who chose to apply in Canada (see also 1.48 4)).

4) Situations likely to Involve Public Policy

"Reasons of Public Policy", as mentioned in A115(2), means the same as "In the National Interest" meant in previous relief provisions and policy. Reasons of public policy which would cause the Governor in Council to facilitate a person's admission to Canada would include those affecting the economic, cultural, social, or scientific aspects of life in Canada. Indeed, reasons of public policy may best be linked to the objectives of Canadian immigration policy set out in A3(b) and (h).

1.40 SPARE

1.41 LANDING OF FORMER CANADIAN CITIZENS

1) Secretary of State will amend the Citizenship Act to eliminate the necessity of former Canadians to acquire permanent resident status prior to a resumption of citizenship. In the interim, during the period of time necessary to change the Act, special procedures (see 1.62) have been developed jointly with officials from Secretary of State which will facilitate the landing of former Canadians who wish to return permanently to Canada.

2) It is proposed that the Citizenship Registration Branch will review requests for a resumption of citizenship pursuant to the requirements of their legislation. If, as a result, the applicants are found to be former citizens, we will be so advised and this factor taken into consideration at the Immigration assessment interview. The Citizenship Registration Branch's findings will be interpreted as a positive indication that the applicants have ties with Canada.

3) Further, as a means of placating potential provincial concerns and of assuring that applicants will not become public charges, it is proposed that an undertaking of assistance be obtained from the family of applicants coming within the assisted relative and family class immigrant categories. It is also proposed that applicants with relatives who have signed an undertaking of support be processed towards landing by Order in Council even if they fail to meet the immigration selection criteria. Applicants who fail to obtain an undertaking of assistance and who cannot meet the Immigration selection criteria, even after discretionary considerations have been examined, will be refused landing in the normal manner because they are

APPENDIX K

ORGANIZATION FOR
CARIBBEAN CANADIAN INITIATIVES
563 Cummer Ave., Willowdale, Ont., Canada, M2K 2M3 Tel: (416) 222-5955

March 24, 1983

W. G. Robinson
Special Advisor to the
Ministry of Employment and Immigration
P. O. Box 2980, Station "B"
Hull, Quebec
J8X 3Z2

Dear Sir:

Illegal Immigrants Issues Paper

The Organization for Caribbean Canadian Initiatives (OCCI) is pleased to have had the opportunity of making a contribution to the public discussion of the Illegal Immigrant question.

In preparing the enclosed response to the Issues Paper, OCCI has canvassed the views of other Caribbean organizations including the Jamaican Canadian Association, the Trinidad and Tobago Association and the West Indian Social and Cultural Society.

We look forward to being able to participate further in the discussion at an oral level.

Sincerely

Wolseley W. Anderson
Vice President
Education and Research

Encl:

RESPONSE TO ISSUES PAPER ON ILLEGAL IMMIGRANTS ISSUED BY W. G. ROBINSON, SPECIAL ADVISOR TO THE MINISTER OF EMPLOYMENT AND IMMIGRATION.

INTRODUCTION

The Issues Paper is seeking to invite rational public response to the recommendations made by the Canada Employment and Immigration Council in its report of December 1982 recommending to the Minister, The Honourable Lloyd Axworthy that a qualified form of amnesty be extended to illegal immigrants.

Considerable attention has been focused by the special advisor on the scope of the problem in terms of the numbers of illegal immigrants and whether the numbers estimated at 200,000 by the Council is sufficient to justify viewing the matter as one of a crisis meriting the consideration of amnesty.

Mr. Robinson is of the view that there is serious reason to question whether the true figure is anywhere near that number. He has drawn attention to the fact that only 15,000 illegal immigrants took advantage of the general amnesty proclaimed in 1973, and that given the publicity from a favourable press and other media on that occasion, it could reasonably be assumed that a large percentage of those illegals within the country would have come forward. Moreover the amnesty was proclaimed at a time when the backlog of illegal immigrants must have been at a peak.

As far as OCCI is concerned, the central issue is no longer one of the numbers involved. The Government has seen fit to put to public discussion a proposal which could bring relief to the human suffering of a significant number of people, whatever that might be, who are in the country illegally. There is some evidence of school age children attending school under the constant threat of detection or failing to attend school because of fear of being apprehended. There is general acknowledgement also that there are illegal immigrants being exploited in the labour market and at the workplace, because of their status in the country.

OCCI shares the opinion of the Issues Paper that while complete eradication of illegal immigration is desirable, it might not at the moment be obtainable since the optimum strategy for its achievement must be compatible with the exercise of discretion based upon humanitarian and compassionate grounds. What therefore is at issue is not really a question of general amnesty but rather the establishment of a program of status adjustment based on specified criteria and the application of discretion on a case by case basis.

Exceptional Treatment of Illegal Immigrants

All persons resident in Canada without citizenship, or the conferment of landed or student status is in breach of the law and therefore here illegally. Thus, the concept of "bona fide illegal immigrants" is a contradiction which obscures the crux of the problem. That problem basically is how to deal with this illegal residence which has become increasingly manifest in Canada.

OCCI supports the principle that appropriate policies and practices in dealing with the overall situation of illegals must hold in balance effective enforcement of the law on the one hand and undue harshness to individuals on the other hand. It believes, however, that humanitarian and compassionate considerations notwithstanding, a general application of legalization would be injudicious undesirable and ill-advised, in as much as it might be seen as undermining the very principle of legality itself. In devising an appropriate strategy for dealing with illegal immigrants OCCI sees the central question not as legalization 'per se'. Instead it sees the need for the identification of circumstances and conditions that would justify the exercise of pardon and inform, on a consistent basis, the differential application of penalty for what is clearly a breach of the law.

For this reason, OCCI is not in support of a general amnesty. Nor does it find the notion of qualified or conditional amnesty sufficiently free of contradiction to invite public confidence and support based on a sense of fairplay.

A programme of status adjustment leading to full landed status seems better to capture and express the spirit of what needs to be done. The mechanism for delivering such a programme must be publicly identifiable as just and humane - firm enough to deter future infraction, but neither menacing nor punitive in its character. The illegal resident, fully acknowledging his breach of the law, must be invited to come forward voluntarily in the expectation that that act, as well as the mitigating circumstances that apply in his case, would make possible both the reduction of his penalty and the eventual regularization of his status.

The idea of a "Conditional Settlement Program" proposed by the Advisory Council is acceptable to OCCI from a conceptual point of view. But its provision of a six-year probationary period, if applied universally across all cases and circumstances, would appear to be unduly harsh and inflexible. It may well encourage those who have managed to avoid detection over the years to continue the risk of illegal status thereby defeating the national intent of an optimal attempt to 'wipe the slate clean'.

Classes of Illegal Immigrants

An initial step in dealing with the question is perhaps to make a classification of illegals presently in Canada. OCCI identifies three categories of such persons:

1. Illegals who have demonstrated to a high degree characteristics of a good citizen.
2. Illegals who have demonstrated some willingness to be good citizens and whose efforts would be enhanced should their handicap of illegality be removed.
3. Illegals who have been criminally involved.

Categories 1 and 2 should be eligible for consideration for some form of status adjustment. Category 3 should not be eligible, though in circumstances where these individuals have Canadian born dependents consideration of these dependents on a case by case basis may be admissible.

After due consideration, candidates in the first category should be placed on probation for a period of not less than one year during which time regularization of status procedures would proceed. In the interim, the candidate will not be entitled to sponsor or nominate family members abroad. Candidates in the second category should be placed on a three-year minimum probation during which period compliance with the criteria for becoming a good citizen would be required and periodically assessed. In these cases also sponsorship and nomination rights will be withheld during the probationary period.

Mechanism for Status Adjustment

A fundamental characteristic of the mechanism through which status adjustment and discretionary landing may be obtained is that it should enjoy a high level of public confidence. If it seems to be too closely identified with enforcement officials then many defaulters may be reluctant to come forward. If it is too independent of the Ministry of Employment and Immigration then public and official support and co-operation are likely to be withheld. To obviate these two extremes and to induce public confidence, OCCI recommends the establishment of a Status

Adjustment Board advisory to the Minister, somewhat along the lines of the Refugee Adjustment Board. The following guidelines would seem in order:

1. Representation on the Board should reflect concern for the ethnic dimensions of the problem and the need to minimize ethnic and racial tensions.
2. The scope of the Board should be limited to assessing, reviewing and recommending functions, leaving the officials to discharge their usual administrative and enforcemnt activities.
3. The operation of the Board should be governed by the application of specified criteria and the exercise of discretion on a case by case basis across the three categories identifeid above.
4. The Board should recommend on how status is to be regularized in each case.
5. The Board should recommend removal only in instances where the defaulter has been criminally involved and desires that such a recommendation be made in the interest of regularizing the status of a dependent child or children.
6. The illegal resident who has a criminal record or has been involved in criminal activities, and who comes forward voluntarily to estimate his chances should not be reported on by the Board. The Board should destroy his application. But

the candidate will not be otherwise immune from apprehension and prosecution through normal detection procedures.

7. The Board should advertise and invite application for status adjustment.

One advantage of such a Board would be that its public presence and ethnic community orientation might well act to reduce dependency on the services of "unscrupulous consultants" who often are a hindrance rather than a help in the individual's decision to come forward.

Assessment Criteria

Reference has been made above to the need for the Board to operate within the framework of specified assessment criteria. OCCI would recommend the following for inclusion among such criteria.

- Voluntary coming forward of the candidate
- Length of time the candidate has been illegal in Canada
- The circumstances leading to the decision to become illegal
- Is the candidate industrious, gainfully employed, or has he been an economic burden or public charge on the state.
- Does the candidate own property
- Has the candidate shown evidence of self improvement through schooling, courses, etc.
- Has the candidate been involved in community work

OCCI recommends further that a points system be constructed to weight these criteria and that a cut off point be established in a cumulative scale to distinguish between category 1 and category 2 candidates.

While there may be a future role for 'informers' and those who otherwise "co-operate with enforcement officials" in the apprehension of illegals, OCCI is very reluctant on moral grounds to have that behaviour included as a criterion for earning status adjustment points.

Border Control

Since it has been established that the overwhelming majority of Those found to be in Canada illegally had in fact entered the country by lawful means then overstayed, there would seem to be little question about the need to improve the effectiveness of border controls. Also, it is a shortsighted policy that would shy away from the financial costs that effective controls would entail, only to incur even greater financial and social costs in the detection and removal of defaulters at a later stage. It is important that time delays and inconvenience to legitimate visitors at the points of entry and departure be reduced to the absolute minimum compatible with effective control. But their existence at an irreducible level must be seen as an inevitable price to be paid.

OCCI endorses the recommendation of a comprehensive system of tight controls at the major points of both entry and exit. A completed record of entry form, as was required before 1970, must be submitted by all visitors on entry as a routine part of the examination conducted by better trained and vigilant immigration officers. And the active co-operation of airlines in this exercise must be sought. Departing visitors should be required to present the duplicate copy of this form at the point of exit. Appropriate penalty should attach to failure to comply with this requirement.

Stamped in the visitor's passport at the point of entry should be both date of entry and period of stay as an indication to the visitor that departure is as serious a commitment as entry.

Effective use must be made of the data provided by visitors in this manner through adequate application of electronic systems. Indeed, only from the effective use of such a system can hard information be available as to the volume of illegal residents and the countries from which the greatest percentage of defaulters originate.

Enforcement Within Canada

The heavy reliance in the past on a reactive rather than a proactive policy of enforcement might well be the reason a higher incidence of detection of illegals among visible minorities, particualrly from the Caribbean, can now be reported. Whether this is so or not, it is essential to ensure that a deep-seated general problem does not become localized to particular groups thereby singling out those groups for special attention. A major shift to a more proactive policy may result, in appearance and in fact, in an undue harassment of visible minorities by enforcement authorities. Every vigilance will be required to guard against this. It is quite possible, however, that an evenly managed proactive policy may turn out to be more effective overall, in as much as it may lead to the apprehension of larger numbers of illegals from other more 'protective' ethnic communities. Visible minorities along with all other communities in Canada are likely to be more disposed to suffer the inconveniences of investigative searches by the enforcing authorities if these were seen to be conducted with equal vigilance across all groups, agencies and locations.

OCCI sees the necessity of strengthening the emphasis on enforcement and for providing increased powers of investigation through legislation to make this possible. However, such increased powers should not be extended to the police but to government immigration officials instead. These officials should have the power to require employers to produce their personnel records. At the same time, improvement in more clearly defining the role of these investigators and providing the necessary training programmes for efficient performance must be pursued.

Inevitably, financial costs and negative effects in terms of community relations will have to be balanced against the potential gains in enforcement. But these potential gains may never be realized if the problem continues to be addressed reactively, largely through an informer system which succeeds in identifying defaulters in some ethnic communities only. In our opinion, maximum gains are better assured through a proactive policy, even if some encroachment on the freedom of all individuals is incurred in the process.

Law Enforcement Agencies

The suspect sensitivity in handling minority group matters reported of the police, as well as their limited knowledge in immigration practices and procedures, does not provide that confidence necessary for a recommendation of an extension beyond their present level of involvement in the detection and apprehension of illegal immigrants. The initiative in a proactive enforcement policy must remain firmly with the immigration officers. The law enforcers must play a secondary, supportive and co-operative role only. Fingerprinting should continue to be used only as warranted in criminal cases.

Prosecution of Employers

There is ample evidence that illegals are attractive to employers because of the low wages they accept based on the vulnerability of their status. It is also well known that where a particular ethnic community enjoys an economic base which generates employment opportunities, its own ethnics may suffer similar exploitation to other employees from outside that ethnic community. On the other hand, however, they may enjoy a greater degree of 'protection' from disclosure of illegal status. In one way or another the ethnic employer silences the member of his ethnic group as an informer either on him the employer or on other illegal employees.

Legislation that is really mindful of correcting such exploitation and abuses personal and public, would be effectively worded to deter and penalize the offender. In such legislation, it is essential that the onus be placed on the employer to seek to establish the employability status of a prospective employee. He must keep records of such employees. These records must be submittable on request to immigration inspection officers.

OCCI agrees with the recommendation of the Advisory Council that specific guidelines on the documents of identification to be obtained by the employer from prospective employees must be adequately publicized. In this respect OCCI supports also the corresponding changes to Section 97 of the Immigration Act (p.38 of the Issues Paper). As far as Social Insurance Number is concerned, it would be enough, as recommended by the Coucil, that these documents carry a warning against their adequacy in conferring authority to work.

Extended Visitor Visa Requirement

The extension of visa requirements is obviously a useful element in a hierarchy of strategies for effective control against illegal immigrants. Historically, however, and for good reasons, the use of this device has been limited in Canadian immigration experience. To employ it against areas defined as the most errant can be justified only to the extent that the data for defining problem areas are derived through an efficient and reliable detection apparatus. The comments above on reactive and proactive approaches to detection, as well as the overall 'softness' of the data on illegals, leave the conditon of reliability very much in doubt. Consequently the extension of visa requirements would seem unjustly discriminative and punitive against particular groups.

Further, there might well be a correlation between delays in processing applications for landed immigrant status in certain areas such as the Caribbean and the number of visitors from these areas who come to Canada with intent to stay. Many such persons might have been encouraged to await a positive decision on their application in their country of origin had the waiting period been shorter and the resultant anxiety and frustration level lower. This situation emphasizes the need for greater despatch at immigration offices in these territories. For, with this provision, the temptation to circumvent the system is then reduced.

In the opinion of OCCI, effective border control, more efficient detection and apprehension procedures and greater time efficiency in Canadian offices abroad are higher priorities in solving the problem of illegal immigrants. Until these higher priorites of strategy are met, the institution of extended visitor visa requirements is, at least, premature. For similar reasons consideration of the 'sponsored visitors' idea should be postponed.

Concluding Statement

The Issues Paper has looked at the problem in a comprehensive manner. It has dealt sequentially with its scope, what may be done in the very short run to contain the situation, and what steps might be taken after this containment to curb and prevent illegal residence.

While believing all these areas to be vital, OCCI would like to register its particular focus on approaching a solution. This focus can be summarized as follows:

First, we are less concerned, at this stage, with the alleged numerical magnitude of the problem than with the institution of control and enforcement practices that could, and would, be applied with consistency and efficiency across the many communities and regions in Canada. We feel that it is only through the institution of such policies and practices that the actual dimension of the problem will become revealed.

Second, for immediate containment of the problem a mechanism for status adjustment, which enjoys public confidence because of the balances and flexibilities which it ensures, must with some urgency be put into operation. It is in this body, for example, that the real balance between compliance with the law and compassion for individual cases must be worked out.

Third, in both cases - short-term containment and long-term control - the cost factor will be an important consideration. Nevertheless, it would be a travesty of the overall objective of the exercise if the failure to make adequate financial investment now were to lead to the escalation of social costs in the future.

OCCI believes that its suggestions in this response would go a far way in safeguarding against such eventualities as well as establish a sound basis for an optimal solution of the problem.

Organization for Caribbean Canadian Initiatives
March 24, 1983

APPENDIX L

CENTRO PARA GENTE DE HABLA HISPANA
CENTRE FOR SPANISH-SPEAKING PEOPLES

582-A COLLEGE STREET, TORONTO, ONTARIO, CANADA M6G 1B3
TELEPHONE (416) 533-8545 (416) 533-0680 (LEGAL LINE)

Mr. W.G. Robinson
Special Advisor to the
Minister of Employment and Immigration
P.O. Box 2090, Station "B"
Hull, Quebec
J8X 3Z2

May 16, 1983

Re: Illegals

We wish to express our appreciation for your consultation with us and other community organizations during your recent trip to Toronto.

We would also like to take this opportunity to clarify our position regarding several matters touched upon in our conversation. Our written brief was made in response to the Advisory Council's Report, prior to release of your discussion paper. As such it confined itself primarily to a critique of the Report. We did not have sufficient time to make a second written submission in response to your discussion paper. However, we have had an opportunity to study the brief submitted by the Canadian Bar Association, Immigration Section, and we wish to advise you that we fully endorse it.

With respect to your suggestion regarding community input, we have some reservations. If the Minister proposes to phase-in a special programme for landing illegals, we would be pleased to offer suggestions as to criteria, i.e. an initial programme focused on illegals who have children, regardless of length of time in Canada, to be gradually expanded to include other illegals, who could apply intially on an anonymous basis. However we are concerned about any attempt to constitute community organization representatives as decision makers with respect to individual cases. We feel this would destroy our credibility in the community and undermine not only our effectiveness with respect to our advocacy role vis a vis immigration matters, but also all our other advocacy and informational functions with respect to government. We suspect that any proposal (whether by way of a constituted "Board" members appointed on a full-time basis, or any other means) for such a scheme, would be met by stiff opposition from community groups.

In conclusion, we can only reiterate our suggestion that an effective public information campaign supported by statistical data, be mounted immediately so that the political climate will permit a humanitarian resolution of the present problems of illegals.

Sincerely

Stephanie Thomas

Stephanie Lillian Thomas, Staff lawyer
SLT:TM opseu 512

APPENDIX M

Catholic
Social
Services

☒ 8815 - 99th Street
Edmonton, Alberta T6E 3V3

☐ 11316 - 130th Avenue
Edmonton, Alberta T5E 0T5

☐ #201, 4921 - 49th Street
Red Deer, Alberta T4N 1V1

☐ 5220 - 51st Street
Lloydminster, Alberta T9V 0P4

May 12, 1983

Mr. W. G. Robinson
Special Advisor to the Minister
of Employment and Immigration
Government of Canada
P.O. Box 2090
Station B
Hull, Quebec
J8X 3Z2

Dear Mr. Robinson:

Further to my letter of March 28th, please find our Paper entitled "illegal Immigrants Issues".

I regret that our comments do not reach you by your deadline but as indicated in earlier correspondence, we did not receive notification until a few days prior to the deadline.

We thank you for the opportunity that we have had to comment on thismost important issue.

Yours very sincerely,

Father William Irwin
Executive Director

WI:lb

ACCREDITED

Member
Child Welfare League of America, Family Service Association of America, Alberta Association of Child Care Centres
United Way -- Edmonton and Area and Red Deer and District

ILLEGAL IMMIGRANTS ISSUES PAPER

RESPONSE FROM CATHOLIC SOCIAL SERVICES, EDMONTON

INTRODUCTION

It is difficult for an agency such as Catholic Social Services, which offers social service to people irrespective of origin, race, religion or creed, to take a firm stand on the matter of illegal immigrants.

Furthermore, while seeking a solution to the current problem of illegal immigration we believe it is essential to concurrently address the root causes. This task entails a global examination and study of the phenomenon of illegal immigrants. Why do people break the law in order to live, however temporarily, in a country such as Canada? Why is there a significant number of illegal immigrants originating from certain countries and not from others? Are Canada's immigration policies overly restrictive? Are Canada's immigration policies fair and humane in application throughout the world?

ISSUES

In addressing the issue of the number of illegal persons in Canada at this time, we have no better idea nor the means of determining the gravity of the situation on a local basis than on a national basis. We find it difficult to sympathise with an illegal immigrant who is working in Canada at the expense of a Canadian resident who may be unemployed and who must resort to assistance from public or private sources for his maintenance and that of his family.

The argument is often made that an illegal immigrant does not displace a Canadian resident in that he or she will take a job which a Canadian does not want. Such jobs, it is suggested, are usually of the labouring kind, or menial, offering no challenge and providing scant opportunity for a decent living. If the latter point is correct, would it not be more reasonable to increase the pay for such positions so that Canadians and/or permanent residents will accept such work rather than to rely upon illegal immigrants, thus increasing the number of illegal immigrants. We recommend that the government of Canada intensify the enforcement of existing laws. Vigorous and effective enforcement of these laws will reduce the incentive for employers to hire illegal immigrants. The government also needs stronger enforcement tools and sanctions to deal with the serious problem of employers who engage in a pattern and practice of hiring and exploiting illegal immigrants.

There are other aspects to the illegal immigrant problem. Such a person is aware that he must avoid all contact with public and private agencies so that he may not be detected. He must live furtively in constant fear that he may be discovered. This leaves him an easy prey for unscrupulous employers and others who are willing to take advantage of his situation. He must also, while in Canada, remain separated from his family, thus inflicting an added hardship.

We realize that the control of illegal immigrants at ports of entry into Canada would be cumbersome and time consuming and likely be ineffective. Such control would also be detrimental to the tourist industry as reflected on the "bona fide" visitor and to the Canadian resident. Visitors from a greater number of countries could be requested to obtain a visa before arriving at ports of entry; however, this would entail having more Canadian government personnel employed at posts abroad and might invite retaliatory measures being adopted by these countries. We recommend that visa requirements be considered for those coming to Canada from countries from where a "significant" number of illegal immigrants have been identified in Canada.

The Immigration Act 1976 brought into force new control measures which are effective primarily in establishing whether a person is in Canada legally or illegally. These new measures, however, do not assist in the location of the illegal immigrant once he has been granted entry in Canada.

It would seem, therefore, that if effective controls are to be implemented, this can be done from within Canada. It is our view that there should exist required regulations sufficient to permit a co-ordinated effort to be made which would effectively, within a reasonable period of time, make it possible to identify persons illegally in Canada and to bring about their removal. It is recognized that unless this identification can be made quickly, then the government would be faced with the same problem as now exists i.e. amnesty or not.

In terms of a general amnesty being declared, it is our view that it should not be applied unless the authorities have the necessary legislation in place to provide for an effective control program, otherwise we would be faced with amnesties "ad infinitum".

Should there be another amnesty declared, it would be the third in a 25 year period. The first amnesty applied only to Chinese people. There was some justification for such a decision, because the illegal immigration was the result of repressive and discriminatory legislation toward Chinese persons.

The second amnesty known as "Project 97", may be considered justifiable, because it resulted from legislation which encouraged the entry of illegal immigrants. The control and removal mechanisms were ineffective and the problem could probably only be solved by way of amnesty.

The 1976 Act and Regulations rectified many of the problems of the past, however, it did not provide the mechanisms which would identify illegal immigrants and effect their removal before solid grounds could be established to support an application for legal immigrant status on compassionate or other grounds.

Should the government elect to offer another amnesty, we would suggest that the illegal immigrant not be placed on a period of probation pending his ability to demonstrate grounds for his legal entry into Canada. It his were not done, an identical situation to that which prompted Project 97 i.e. the person would have been in Canada for a sufficient period of time so that it would be considered inhumane to remove him.

We recommend that the government of Canada augment its resources to deal with illegal immigrants on a case-by-case assessment. This process would allow each case to be considered on its own merit without creating expectations in the minds of the illegal immigrant for another amnesty.

It is our view that permitting the illegal immigrant to make application for legal status anonymously, through an agent, would be a regressive step and would provide unscrupulous agents and other persons with the opportunity to prey on the applicant. Should the applicant fail in his bid for legal immigrant status, he would not then be accessible for control officers to effect his removal. We, therefore, recommend that voluntary, non-governmental organizations be considered as advocates and agents for the illegal immigrant who applies for legal status in Canada.

SUMMARY

We commend the Government of Canada for initiating a detailed examination of the Illegal Immigrants issue. We thank you for the opportunity of sharing our comments and, in summary, we offer the following recommendations:

Recommendation #1

That the Government of Canada undertake further research in order to determine and address the root causes of illegal immigration.

Recommendation #2

That the Government of Canada initiate a detailed investigation to determine whether Canada's immigration policies are universally applied in a fair and humane manner.

Recommendation #3

That the Government of Canada intensify the enforcement of existing laws which will reduce the incentive for employers to hire illegal immigrants.

Recommendation #4

That stronger enforcement tools and sanctions be initiated to deal with employers who engage in a pattern and practive of hiring and exploiting illegal immigrants.

Recommendation #5

That visa requirements be considered for visitors from where a "significant" number of illegal immigrants have been identified in Canada.

Recommendation #6

That there should exist required regulations which would effectively and within a reasonable period to time identify illegal immigrants in Canada and bring about their removal.

Recommendation #7

That a general amnesty should not be declared unless there exists necessary legislation to provide for an effective control program.

Recommendation #8

That the Government of Canada augment its resources to deal with illegal immigrants on a case-by-case assessment.

Recommendation #9

That voluntary, non-governmental organizations be considered as advocates and agents for the illegal immigrant who applies for legal status in Canada.

Edmonton, Alberta
May, 1983

Catholic Community Services Inc.
Les Services Communautaires Catholiques Inc.

March 11, 1983

Mr. W. G. Robinson
Special Advisor to the
Minister of Employment &
Immigration
P. O. Box 2090, Station "B"
HULL, Quebec
J8X 3Z2

Dear Mr. Robinson:

In response to your request for input into the "Illegal Immigrants Issues Paper", I am taking the liberty of responding on a personal level.

Page 18 (b)

The Refugee Determination Process has been the subject of debate by many of the Canadians working with or near this system, and too many individuals have fallen into the "illegal" category for Canada to treat so lightly the plight of these people without an indepth look at the consequences.

From past experiences, I have had to literally stand between enforcement officers and delay deportation of an "illegal" to prevent harm to an unborn child (as outlined to me by a doctor). In many other cases, the "prevention" of deportation resulted in approval by government for residency.

I often wonder how many people should have had this consideration and who were simply deported because they had no "access" to someone like me.

Unless the "Refugee Determination Process" becomes virtually foolproof the existing road between "humanitarian consideration" and the "illegal system" is much too short and unworthy of perpetration by a country such as ours.

Page 21 (d)

A "non-governmental and non-punitive" structure and

March 11, 1983

Ms W. G. Robinson:

system is necessary to provide access to the illegal by government. This would provide as accurate as possible "head counts" needed by government under the circumstances outlined in your paper.

"An illegal" will come to a system that will consider his situation justly if he has confidence of a fair hearing.

The following elements are necessary: 1) clarification of their situation, 2) access to the legal system 3) access to the governmental consideration.

I must add that I have provided "exit" for many more "illegals" than, asked for, or received special humanitarian consideration by government.

The ability of people such as I, to be reached by the illegal must be recognized and supported by government, we cost very little.

I am enclosing an exerpt from a paper by lawyer, S. Foster (866-5051) which outlines some of the difficulties faced by "poor" applicants for refugee status. If you require further details, please do not hesitate to call him or myself.

Yours truly,

CATHOLIC COMMUNITY SERVICES INC.

Thérèse Jubinville,
Executive Director

/jw
encl.

I will attempt below to briefly deal with some of the coercive measures which have recently been applied to refugee claimants in Canada, specifically:

1. The detention of refugee claimants.

2. The penal prosecution of refugee claimants.

I will try not only to delineate the extent of these measures but also to show that their implementation is neither legally nor morally justifiable.

The Detention of Refugee Claimants

It has often appeared to be standard practice of the Department of Immigration to detain refugee claimants upon their arrival in Canada because they are indigent. (2) While Immigration adjudicators have seemed less than willing at times to apply such an across the board policy, case-presenting officers representing the Department systematically demand detention on this ground.

The Department's position appears to be that if a refugee claimant does not have sufficient funds or personal contacts in Canada prepared to assist him, than there is reason to believe that once released he will not report back for the continuation of his immigration proceedings. (4) The Department has also advanced the argument that the detention of indigent refugee claimants is for their own good, a kind of protection against the cruel realities of life on the streets of Canadian cities.

Firstly, I would maintain that the detention of refugee claimants on the ground that their indigence may prevent them from reporting for the continuation of proceedings cannot be justified. The basis of such a position is that the refugee claimant will not be able to secure the bus fare required to return to the cite of the proceedings. How can a person be deprived of his freedom on such flimsy grounds? Surely this could not have been the intention of the Canadian legislator in drafting the Immigration Act nor of the signatories to the Geneva Convention. As well, I suspect that a good case could be made that such a position derogates from the protection in the Charter of Rights and Freedoms against arbitrary detention or imprisonment. (5)

Secondly, I would maintain that the argument that detention of indigent refugee claimants is a means of protection for "their own good" is an insult to the refugees themselves. It is an insult primarily because it affirms Canada's refusal to provide any kind of financial support to needy refugee claimants. (6) Again, such a position cannot be justified in view of Canada's international obligations, for example, under Article 25 of the Universal Declaration of Human Rights which provides that everyone has a right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services.

It is also an insult because the conditions in which the refugee claimants are detained are by no stretch of the imagination for "their own good". The main detention center for Mirabel International Airport is a converted section of a Holiday Inn in Montreal. The conditions there do not meet some of the basic minimum requirements applicable to prisons. For example, detainees are not allowed any outdoor exercise or fresh air. The only time a detainee is released from the indoor center is once a week when he is escorted to his mandatory weekly release hearing. Thus, it is not uncommon for a refugee claimant detained for three weeks to have been outdoors on only three or four occasions. As well, sick detainees (with something contagious like a cold or flu) appear not even to be removed from the center but remain amongst the other detainees.

Another reason systematically invoked by the Department for the detention of refugee claimants is that they may constitute a danger to the Canadian public.(7) For example, a claimant may have explained to Department officials that the authorities of his country had sought to arrest him in connection with some alleged criminal act, for instance a bank robbery. The claimant explains that he was never involved in the alleged or any other crime and that the prosecution is in fact persecution due to his political convictions. Suddenly, the claimant finds this statement being used against him in an Immigration inquiry to justify his detention. The Department demands that the claimant be detained at least until such time as the necessary security checks may be made. These checks are usually nothing more than a verification with the local Interpol branch in the claimant's country. The process is frivolous since the local Interpol office is staffed by local police. It is difficult if not impossible to imagine obtaining any objective information in this manner. Unfortunately, however, the procedure is time-consuming and the refugee claimant remains in detention until a response is received.

Naturally, everyone would agree that there is some legitimate need to attempt to prevent the infiltration of criminal elements into Canada. However, surely the means to this end must not be completely out of proportion with the end itself. The systematic detention of refugee claimants who voluntarily recount these kinds of incidents of persecution seems to me to create more injustice than can be rationalized by any need to protect the physical well-being of Canadians.

Penal Prosecution of Refugee Claimants

Most recently the Department of Immigration has embarked on a new project - the prosecution of refugee claimants for their illegal entry into Canada. At Mirabel International Airport this policy seems to have been incorporated into an internal directive providing for the prosecution of all persons having false passports irrespective of the making of a refugee claim.

The scenario might be as follows: the refugee claimant arrives in Canada with a forged passport (which he was obliged to obtain to travel here) and makes a claim to refugee status at the airport. At that time, or as soon as he has overcome his apprehension about being deported to his homeland should the irregularity be found out, he voluntarily explains to the Immigration authorities the problem with his travel documents. To his surprise, he suddenly faces prosecution in the criminal courts for his illegal use of a forged passport to enter Canada.

A number of refugee claimants arriving at Mirabel International Airport with irregular travel documents have been prosecuted either under Section 95 of the Immigration Act or Sections 324-326 of the Criminal Code. The penalty provided for in Section 95 is a maximum fine of up to $5,000. and/or imprisonment of up to two years. Under the Sections of the Criminal Code the penalty provided for includes imprisonment of up to fourteen years. In addition, the consequence of a conviction under these sections of the Criminal Code is that the refugee claimant becomes inadmissible to Canada even if accepted as a refugee. (8)

Article 31 (1) of the Geneva Convention provides as follows:

> "The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of Article 1, enter or are present in their territory without authorization provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence."

Grahl-Madsen, the leading authority on the international law relating to refugees, states the following:

> "...Article 31(1) obligates the Contrating States to amend, if necessary, their penal codes or other penal provisions, to ensure that no person entitled to benefit from the provisions of this paragraph shall run the risk of being found guilty (under municipal law) of an offence." (emphasis added) (9)

Thus, Canada has failed to meet its international obligations in not amending its penal legislation as required to take Article 31(1) into account. Neither Section 95 of the Immigration Act nor the Criminal Code contain any proviso relating to Article 31. Refugees in Canada definitely run the risk of being found guilty under these provisions of law.

Moreover, Canada has failed to meet its international obligations by blatantly ignoring the Geneva Convention and imposing penalties on refugee claimants without any regard for Article 31. I suggest that this action also constitutes a breach of the spirit and intent of Canadian domestic law, specifically Section 3 of the Immigration Act which provides as follows:

> "It is hereby declared that Canadian Immigration policy and the rules and regulations made under this Act shall be designed and administered in such a manner as to promote the domestic and international interests of Canada recognizing the need...(g) to fulfil Canada's international legal obligations with respect to refugees and to uphold its humanitarian tradition with respect to the displaced and persecuted."

It is worth noting that Article 31 does not mean that Canada may never prosecute refugee claimants for illegal entry or presence. As Grahl-Madsen points out:

> "By prohibiting the imposition of penalties, Article 31 does not prevent a refugee being charged or indicted for illegal frontier crossing or unlawful presence, *if one of the purposes of the proceedings is to determine whether Article 31(1) is in fact applicable*. As pointed out by the Belgian delegate at the Conference of Plenipotentiaries, Mr. Herment, cases concerning refugees may be submitted to the courts, which would decide whether extenuating circumstances should or should not be taken into account in any given case." (emphasis added) (10)

The point is that Canada's domestic law (ie. the Immigration Act and Criminal Code) must be amended to give the courts or some other judicial or quasi-judicial body the jurisdiction to determine the applicability of Article 31(1) before subjecting a refugee to penalties.

Most recently the Department of Immigration and the R.C.M.P. branch responsible for enforcement at Mirabel International Airport seem to have agreed to amend their earlier policy of prosecuting all cases including refugees. They have apparently decided that they will not prosecute cases where the refugee claimant voluntarily explains his illegal entry or attempted entry *prior* to his inquiry. The claimant will be given a final chance to "come clean" before the inquiry but if he fails to do so he will be prosecuted. (11) This is the Department's interpretation of the proviso "without delay" in Article 31. Obviously this kind of arbitrariness serves to enforce the need for judicial supervision and application of Article 31 by the courts or some body bound by the rules of natural justice.

As the situation stands there is no mechanism available to fairly determine the application of Article 31 to a refugee claimant (save the decision of the Minister upon the recommendation of the Refugee Status Advisory Committee - upheld on appeal - that the person is not a refugee which *a fortiori* excludes the application of Article 31). The only fair solution, until the proper admendments to Canada's laws are made, is not to proceed with any prosecutions or at least to delay proceedings until the person has been determined not to be a refugee.

Conclusion

In my view, there has unquestionably been an increase in the use of coercive measures against refugees arriving in Canada - and, as I have attempted to show, in a manner which is neither legally nor morally justifiable. It is frightening to think that this might constitute part of a policy to curtail social services in order to streamline Canada's socio-economic structure/

What is also frightening is that opponents of such measures may become "conditioned" by the cumulative effect of one setback after another in attempting to fight their implementation. This kind of conditioning must be avoided and the opposition must be prepared to meet each challenge with an analysis of what is right and wrong, just and unjust, in the circumstances.

Continued opposition to the coercive measures outlined above calls for pressuring the Canadian government:

1. To implement a decent program of financial support for indigent refugee claimants.

2. To improve conditions of detention for refugee claimants.

3. To amend the policy of detaining refugee claimants on account of unfounded prosecution in their own countries as recounted voluntarily by the refugee claimant himself.

4. To amend Canada's laws to implement Article 31(1) of the Geneva Convention and to withdraw all current prosecutions until such amendments are made and to compensate persons improperly convicted and penalized in the past.

February 1993

FOOTNOTES

1. Social Analysis: Linking Faith and Justice by Joe Holland and Peter Henriot, S.J. Center of Concern, Washington, D.C. 1980

2. ibid, p.34

3. At least this is the case at Mirabel International Airport where a great number of Canada's refugee claimants arrice. I should add that a great deal of my references in this paper flow from my experiences at Mirabel International Airport.

4. S. 104 (3) of the Immigration Act, 1976, provides that an adjudicator may detain a person where in his opinion the person "would not otherwise appear for the inquiry or continuation thereof or for removal from Canada".

5. The Constitution Act, 1982, Part I, Canadian Charter of Rights and Freedoms, S. 9:

"Everyone has the right not to be arbitrarily detained or imprisoned" Clearly the expression "everyone" is to be juxtaposed to the expression "every citizen of Canada" as used,for example, in S. 6 and the former would cover a refugee claimant.

6. It is interesting to note that there was, until late 1982, a program of financial aid for indigent refugee claimants in the Montreal area. The Department cut the program stating that the great majority of refugee claimants were refused refugee status and that the Canadian public was simply not prepared to support these disguised immigrants. The Department's reasoning (even if it did represent the view of Canadians which is very doubtful) was fallacious in two ways. Firstly, it failed to take into account the overriding need of those refugee claimants who are accepted (some of whom left Canada prior to even receiving an answer because of their impossible financial situtation). Secondly, it incorrectly assumed that because the majority of refugee claimants are rejected that the majority of indigent refugee claimants are also rejected. I would suggest (although I have no statistics) that the majority of indigent refugee claimants in the Montreal area in 1982- many of whom were Guatemalans - would have been accepted.

7. S. 104(3) of the Immigration Act, 1976, provides that an adjudicator may detain a person where in his opinion the person "poses a danger to the public.

8. I recently defended a refugee claimant prosecuted under S. 326. Luckily, the judge at the preliminary inquiry refused to allow the case to proceed to trial. I note in passing that I have been advised by the Department of Immigration that in future they will reserve prosecution under the Criminal Code for "terrorists" and the like and use the Immigration Act to prosecute ordinary cases.

9. The Status of Refugees in International Law by Atle Grahl-Madsen, A.W. Sijthoff-Leyden, 1966, p. 211.

10. ibid, p. 210-211

11. This was explained to me in late February by the R.C.M.P. officer responsible for the case in another improper prosecution which I am defending.

12. It is also frightening to think of how far Canada has strayed from the vision many feel it should have of immigration. The Catholic Conference of Bishops in a brochure entitled Strangers in Our Midst, 1979, state the following:

> "...we are heirs to the admonition that comes down through the ages as the words of Yahweh:'If a stranger lives with you in your land , do not molest him. You must count him as one of your own countrymen and love him as yourself - for you were once strangers yourselves in the land of Egypt'(Lev.19:33-34). Some might say that these ideals are out of date or unrealistic. However, it is evident that, the way life is going, we are more and more called to become a single people, without any boundaries. Our view of the world expands; our awareness takes in the entire planer. No longer should we think of strangers, but only of sisters and brothers".

APPENDIX O

THE SWEDISH PRESS

~~1000 - 207 W. HASTINGS STREET, VANCOUVER, B.C. CANADA V6B 1H7~~

[illegible]
Tel (604) [illegible]

March 21, 1983

W.G. Robinson,
Special Advisor to
the Minister of Employment & Immigration
P.O. Box 2090, Station "B"
Hull, Quebec J8X 3Z2

Dear Mr. Robinson:

I have received your interesting and well written paper on illegal immigration. Swedish immigrants have usually adapted very well to life in Canada, and illegal immigration is not a big issue within the community. I do feel, however, that many people remeber their roots and feel somewhat uncomfortable with the notion of stricter laws. Canada is regarded as a country of freedom and opportunities, by Canadian-Swedes and people in Sweden.

Racial biasis occurs unfortunately also among Scandinavians, although not to a greater extent than in society in general, I hope.

Those of us who arrived in Canada during the last 20 years are used to relatively unrestricted travel in Europe, and a free labour market in Scandinavia. Immigration controls in Canada are perceived as very tough (not to speak of the U.S.). My feeling is that tougher controls at entry points, visas, sponsored visitors etc. wouldn't go down well.

Many Swede's would like to come to Canada, but I have never heard of anyone staying here illegaly.Few immigrants are let in every year from Sweden, and many of them have to work really hard to get their papers. It might sound unusual that Scandinavians - who are quite well off at home - are showing an increased interest for Canada as a place to live and work, but that is the case. The competition for jobs is fierce and there is little room for expansion. Many of these people would be an asset to Canada.

Somehow the reasons for stronger immigration laws are not very clear to me. Canada - especially British Columbia - is underpopulated and there is room to grow in many areas. Are illegal immigrants really taking jobs from residents? This argument is heard very often in Europe, but every study I have seen in Sweden shows that they take jobs nobody else wants and that they work very hard. Immigrants I met in Canada - with various backgrounds - are really happy to be here and are sporting the Maple Leaf more than others. Some of them had to go througha lot of trouble to "get their papers".

My feeling is that it is questionable if tougher immigration laws will do anything to solve unemployment - it is rather a structural problem that Canada is better equipped to solve than many other countries.Illegal immigration might be a problem locally, for example in Toronto, and it is also causing racial tensions. These problems should not - in my opinion - be dealt with through a stronger legislation.

Yours Sincerely,

Jan Franberg

Jan Franberg, Editor

APPENDIX P

AIR CANADA

1 PLACE VILLE-MARIE, MONTREAL, P.Q., CANADA H3B 3P7
1 PLACE VILLE-MARIE, MONTRÉAL (QUÉBEC) CANADA H3B 3P7

CABLE AIRCANADA TELEX: 06-217537
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April 29, 1983

Mr. W.G. Robinson
Special Advisor to the
Minister of Employment & Immigration
P.O. Box 2090, Station "B"
Hull, P.Q.
J8X 3Z2

Dear Mr. Robinson:

Subject: Illegal Immigrants
Issues Paper

Air Canada appreciates the opportunity to contribute comments and recommendations as solicited by the "Illegal Immigrants Issues Paper" in the hope these will assist in much-needed revisions to current Immigration Policy and legislation.

Airlines' Responsibility

International airlines are held responsible (unjustly we believe) for all costs incurred by passengers refused entry and awaiting final disposition of their cases even though these passengers usually were in possession of all documents as prescribed by Immigration to visit Canada. Many of these cases take over a year and up to two years to finalize. With the airlines forced to accept these costs, though they can do nothing to foresee or avoid them, there is little incentive for Immigration to expedite this process.

The unfair financial imposition on the airlines may also be encouraging illegal immigrants. Under the present law they can look forward to their complete living expenses including hotel accommodation, meals, medical expenses and transportation being paid by the air carriers for possibly two years or longer. Illegal immigrants violate Canadian laws and the airlines pay all bills!

Recommendation: That airlines not be held responsible when passengers are detained or refused entry to Canada if, when accepting them for transportation to Canada the airline has ensured that the passengers are in possession of all documents prescribed by Canada Immigration for Visitors.

... 2

Extended Visitor Visa Requirements

Though airlines support waiving visa requirements where possible, the events of the past few years dictate a reconsideration of the continuation of this privilege for problem areas.

Recommendation: That visitor visa exemptions be removed from countries producing large numbers of illegal immigrants to Canada and that this action be taken quickly when such problems are recognized.

Unscrupulous Agents/Consultants

These people prey on potential immigrants, particularly in less developed countries. Information campaigns both in Canada and abroad and licensing in Canada could diminish this problem.

Recommendation: That an information campaign be undertaken to diminish the influence of unscrupulous agents on the flow of illegal immigration. Also that licensing of immigration agents in Canada be considered.

Sponsored Visitor Visa

This may be helpful in avoiding delay in travel to Canada in times of crisis. It could, however, open another loophole for illegal immigration if improperly drafted and applied.

Recommendation: That a Canadian citizen or permanent resident be permitted to sponsor a relative or friend to visit Canada in times of personal crisis. such as serious illness or death, the sponsored visitor not to be permitted to seek permanent residency while in Canada nor to have any right to appeal.

... 3

Convention Refugees

Temporary humanitarian programs have been successfully carried out. Refugees have been interviewed and processed outside of Canada and have arrived in an orderly manner and entered Canadian life. The status of "Convention Refugee" has been used, or abused by many, however, in order to circumvent Canada's laws.

People have travelled to Canada from "friendly" countries whose citizens do not require a visa to visit Canada. Accepted for travel in good faith by the airlines and in possession of documents prescribed by Canada Immigration they have, upon arrival, declared themselves "Convention Refugees" and begun the many months or years - at airlines' expense - awaiting the long process to ascertain the authenticity of their claim. Less than 20% are finally accepted as legitimate convention refugees.

Recommendation: a) That the application of "Convention Refugee Status" be reviewed with a view to non-acceptance of a "Convention Refugee" plea from a citizen or permanent resident of a friendly country.

b) Refusal to accept a "Convention Refugee" plea from a passenger who has transited other friendly countries to reach Canada.

c) Alleviating the airlines of any responsibility when a passenger claims "Convention Refugee" status upon arrival in Canada when documents are otherwise in order.

Primary Line

The Primary Line design concept is that the PIL officer's function is to quickly decide whether there is doubt or no doubt and to move the passengers rapidly through the preliminary line. Those passengers who are clearly immediately acceptable (i.e., no doubt) are not kept waiting while others undergo long interrogations. Passengers about whom the PIL Officer has some doubt, or whose papers are not in order are to be immediately referred to a secondary inspection, with

... 3

Customs or Immigration, where an expert can process him/her quickly and efficiently. A Customs split-secondary, segregating those who require minimum secondary examination from the more time-consuming cases has been tested successfully recently in Vancouver. A similar split-secondary for Immigration may increase system efficiency.

Recommdendation: That the design concept of the Primary Inspection System be reviewed and that training of both Immigration and Customs Officers be undertaken as necessary to ensure that all team members understand the system and their role in it. Also that consideration be given to split Immigration and Customs secondary inspections so that passengers who may be quickly processed are not kept waiting while more complicated cases are processed.

Exit Controls

Exit controls create either paper or electronic nightmares containing information about law-abiding travellers. Dishonest passengers give false information or use other methods to circumvent the system. The most that could be expected from a huge investment is that authorities would have a "better idea" as to the number of illegals in Canada. Exit controls hinder the flow of departing passengers, take up valuable airport space and cause flight delays.

Recommendation: That exit controls not be implemented in Canada.

I trust that the above comments and recommendations will be considered constructive and useful. Airlines serving Canada are anxious to see our Immigration legislation revised. If you feel that further explanation or discussion would be helpful, we would be pleased to meet with you.

Yours sincerely,

E.D. Giles
Manager, Facilitation & User
Charges Administration

APPENDIX Q

7481 Ostell Crescent,
Montreal, Que. H4P 1Y7
March 25, 1983.

Mr. W.G. Robinson,
Special Advisor to the
Minister of Employment and Immigration
P.O. Box 2090, Station "B"
Hull, Quebec
J8X 3Z2

Dear Mr. Robinson:-

Just last week I received your "Illegal Immigrants Issues Paper" and am answering your request for input.

As a journalist and child of immigrant parents, I have always had more than a passing interest in ethnics seeking sanctuary and freedom in Canada. Indeed, in the last 18 months or so I have been actively involved in the writing of a book Two Worlds: The Immigrant Experience and have been given a writing grant from the Directorate of Multiculturalism. Based on true experiences, these interviews and submitted stories serve to illuminate, albeit painfully, the traumas our legally landed immigrants undergo in adjusting and integrating.

The "Illegal Immigrants Issues Paper" clearly shows the Immigration Department is caught on the horns of a dilemma--on one hand trying to be compassionate and humanitarian and on the other attempting to uphold the laws that are necessary in immigration control. To indescriminately open our doors to anyone and everyone is contrary to immigration policies in every civilized country in the world. We cannot be different.

However, the "discriminatory effect" you mention must be balanced in all fairness to those who patiently wait and go through legal channels.

Yes, I agree that in times of crisis--war, revolution, flood, famine etc.,-we must be flexible in accepting refugees.

The many immigrants I have spoken to about Canada's policy of sanctuary have nothing but praise, admiration, even reverence for this country. Of course, there are always exceptions, and I have also heard some say with bitterness that the 1973 amnesty was a farce and that many who came forward were ejected from Canada. Perhaps there was insufficient publicity about those who were granted landed status and too much made of the few who were refused.

When one considers the amnesty produced 15,000 to 18,000 illegal immigrants against a figure of approximately 200,000 still underground, (a percentage of 7.5 to 9) it is understandable the government's disturbance at 91 to 92.5 per cent illegals still in hiding. While I do not agree with illegal entry, I would say that fear undoubtedly has kept most of these people living in a twilight zone of non-existence for so long. Remove the fear and perhaps there might be a greater response. Both legal and illegal immigrants have a "uniform fear syndrome". Anything connected with government and police drives them into a panic, especially if they come from police states or countries where there are harsh repressive governments.

Perhaps the creation of civilian committees to deal with them might be more reassuring. And that further incentive would be the coveted reward--Canadian citizenship, but again only after the six year probationary period.

Another method is education. Because immigrants, regardless of status, live for their children, perhaps an offer of benefit to illegals's children might induce them to come forward. Perhaps a guarantee of a free higher education or trade school education might be the plum in the pudding. Most immigrants view education as the only road to acceptance and advancement. These children, after all, were born on our soil and therefore are Canadians even if their parents are still "non-persons".

To placate those landed immigrants who demand fairness, certain "punishments" would have to be set for the illegals. Refusing them permission to sponsor relatives for an x amount of years after they become citizens seems like a logical penance if the same rule is applied to all.

Controls and enforcement at points of entry are vital for this is where the problem gets out of hand. I would like to suggest something because of a personal experience I had when I went to Australia in 1978, following an immigrant story of special significance.

When I applied for a visa to visit, I was required to furnish addresses where I would be staying as well as the amount of time I would spend in the country. When I landed in Melbourne, I was again asked to furnish those addresses and they were checked against those previously provided. In addition an official had called the residents where I planned to stay to verify that I was coming, later that I had indeed arrived and finally after I left to make certain I was out of the country. This method requires a number of phone calls, and if something appeared suspicious, a folow-up visit from a government official could be the next step.

Resource implications and administrative problems in keeping track of these people is easier today than it was years ago. Many things are computerized and people have less of a chance of falling between the cracks in the system. SIN and medicare cards, credit cards etc. are all ways of keeping track of people and computers are even more effective.

One way of dealing with "illegals" could be the appointment of a knowledgeable civilian advisory board by the government--a board able to communicate in the illegals's own language and in a sympathetic manner. There are many people of ethnic origin in Canada who speak three to six, seven or more languages. These people, if recruited, might be invaluable as liaison between the government and frightened illegal immigrants.

Penalties have to be considered, of course, but perhaps they could be a form of so many hours of voluntary work a week in short-staffed institutions or social service areas. The feeling of being needed, wanted and useful often has amazing effects on those who have a low self-worth, and most immigrants do, unfortunately. It is part of the whole adjustment process. Paying for this criminal offence of illegality would be more effective in terms of service--earning one's way into the country.

The use of the visa is a good way of controlling entry from outside Canada. What I find surprising is that 80 countries are visa-exempt. That figure seems abnormally high. If a country like Australia can demand visas from a fellow member of the Commonwealth, then surely we can be a little more careful about exempting 80 countries in such a sensitive area.

Of course, the fear that visa requirement in times of crisis--death or illness of relatives or friends--would delay travel plans is valid, but this can be solved with a "hotline". Like the "Ministerial Permit" that is used for special cases, the same system can be applied to crisis cases. A phone call to a specific number at a consulate or embassy and then a teletype to the city of destination could verify the truth of a crisis situation. While nine cases out of ten might be true, there is always the chance that number ten is lying. But even a ten per cent success rate in halting potential illegals outside Canada is not to be frowned on.

While I do not consider myself an authority on immigrants and immigration policy, nonetheless these areas have been of special interest to me for many years. And what I would like to stress is that all cases should be handled with great sensitivity so the quality of mercy would not be strained.

If not for our immigrants, Canada would not exist today. If Canada did not have such a good image as a country of freedom and opportunity, we wouldn't have so many illegals trying to get in any way they can. We must be doing something right to be so popular, but a certain amount of firmness is necessary and more publicity in other countries should be used to discourage and/or prevent any further violation of our immigration laws. Meanwhile we must deal with those already within our borders.

If I have been of some help, I am very pleased. My only regret is that I cannot do more.

Sincerely,

Milly Charon

Milly Charon, editor
Two Worlds: The Immigrant Experience

Inter-Church Committee for Refugees / Comité Inter-Églises pour les Refugiés

40 ST. CLAIR AVE. E., TORONTO, ONTARIO, CANADA M4T 1M9 TEL (416) 921-4152 CABLE ADDRESS: CANOIKOS, TORONTO

March 7, 1983

W. G. Robinson
Special Advisor to the Minister
of Employment and Immigration
Phase IV, Place du Portage
Hull, Quebec K1A 0J9

Dear Mr. Robinson,

The Inter-Church Committee for Refugees recently reviewed the Report on "illegal immigrants" addressed to the Minister of Employment and Immigration by the Canada Employment and Immigration Advisory Council. We welcome the Council's recognition of the great hardships faced by people who live on the outer edge of our society, because they are not legally landed. We agree that curative measures are needed to resolve their hardships. We strongly support, with certain reservations, the "landing solution" proposed in the report.

However, we seriously object to some of the proposed preventive measures. These carry the risk of eroding important rights and freedoms of all Canadians, even if they may advance lesser values, such as efficient enforcement. We see no need to risk the rights of all in order to deal with problems that might be addressed by measures carrying no such risks. The preventive measures recommended in the report suggest that, for the Council, the main "cause" of illegal immigrants is poor control and enforcement. We want to emphasize instead another cause: the delays and uncertainties faced by overseas applicants. The well-known frustrations faced by overseas applicants must be dealt with effectively to prevent situations that give rise to the temptation or the need to resort to illegal options.

We have prepared some comments on the specific recommendations of the report. We hope these will be of some help to you as you assess the issues and options. We would be pleased to discuss these comments with you in more detail should that be useful.

CURATIVE MEASURES

Recommendation I

(1A) A Conditional Settlement Program should be established whereby persons in Canada without legal status on or before July 1, 1982 be granted temporary resident status for a probationary period of six years before the granting of landed immigrant status. These persons would have to come forward voluntarily and meet certain basic criteria (e.g. no criminal record).

We fully support the concept of a conditional settlement program. However, settlement conditions should be no more demanding than those already in effect under Section 19 of the Immigration Act. A probationary period of six years will create more problems than solutions. The development of a "second-class immigrant" category serves no useful purpose, and may lead to increased exploitation. To impose a penalty period overlooks the fact that many of them have been "punished" already. In practical terms, the enormous burden that the administration of "active" probation counselling would place on already overtaxed Immigration resources is unjustified. In addition, people's willingness to come forward might be reduced seriously by a six year probation. Six years is unfair, bureaucratically unwieldy, and counter-productive to the end goal of resolving the existing situation. The period of probation should be based on the criteria for landing set out in the Immigration Act.

We also question the apparent exclusion of those who do not come forward voluntarily. The report acknowledges that potential participants will need the opportunity to become familiar with the program before coming forward. It is not fair to disqualify people brought to the attention of Immigration prior to coming forward. All persons in Canada without legal status on or before a determined date should be eligible to apply for permanent resident status.

(IB) The Conditional Settlement Program should be in force for a period of three years and should be administered in cooperation with non-governmental, community service agencies.

We fully support this recommendation. More discussion is needed, however, on the resources of the voluntary agencies for the service outlined in the report, i.e. "to explain the Program to potential participants, present cases, explore other legal options." The agencies most likely to be involved are restricted by the terms and conditions of ISAP funding to dealing only with legal residents in Canada for 36 months or less. Some adjustment of ISAP criteria would be necessary.

(IC) A secure identification mechanism should be implemented for participants in the Conditional Settlement Program.

What is recommended here should not be required. We already have social insurance numbers and many other documents to identify non-landed persons. New identification mechanisms should not be necessary.

(ID) *The planned annual quota of legal immigrants to be admitted from outside Canada should not be affected by the illegal immigrants that surface through the Conditional Settlement Program.*

We are in full agreement with this recommendation.

PREVENTIVE MEASURES

It is discouraging to note that seven of the eight recommendations in the report deal with preventive aspects and, of the seven, only two--No. 4 and No. 7--relate to preventive measures that address the problem at the source, before the decision is taken to enter Canada for the purpose of remaining.

Recommendation 2

(2A) An electronic entry and exit control system should be implemented whereby Canadian immigration officials have on record the identity, the country of origin, and the number of aliens entering, leaving, or due to leave Canada.

(2B) The Minister should establish a list of reasonable exemptions from the proposed entry and exit control system.

Recommendation 3

The primary line of inspection at ports of entry should take into account the necessity for greater control from the point of view of immigration.

We have two main comments about this group of recommendations:
1) We do not agree with what seems to be the Council's conclusion leading to these recommendations. That is, weakness or failure of the present border control system is not evident. A tightening of entry-exit controls, therefore, is not the first preventive measure to be considered. We will have more to say about what is the priority matter in our comments on Recommendation 4.
2) These recommendations pose risks to the rights and freedoms of all Canadians. The Council seems insensitive to the complexity of a system that could keep close track of the entry and exit of every non-Canadian without imposing increased surveillance and inconveniences on all citizens, and violating their right to free movement and to privacy. For a study that is much more aware of the human rights issues involved in tighter border controls, we refer you to the section on controls and enforcement in the 6 November 1975 Report to Parliament by the Special Joint Committee of the Senate and the House of Commons on Immigration Policy. That report is also more realistic about the many and costly administrative procedures involved in tightening

controls on non-citizens while leaving Canadians free to leave their country and return to it without undue inconvenience and embarrassment.

(2C) The Minister should continue with the current discretionary policy regarding visa requirements.

We support the recommendation that visas continue to be handled in a discretionary fashion. Our major concern about visa requirements, however, remains. They place bureaucratic obstacles that can have life and death implications for people fleeing persecution, and for whom Canada is the only accessible place of asylum. Visa requirements should never close off escape routes for these people.

Recommendation 4

The system of assessing applicants and categorizing potential immigrants should be reviewed in order to achieve greater efficiency.

We fully support this recommendation. Here the report of the Advisory Council recognizes reasons for becoming "illegals" that relate directly to weaknesses in the overseas processing system. We believe that this recommendation deals with the most important of all preventive measures. It must have priority among them. Apart from the obvious and often repeated concerns about processing delays and regional discrepancies, there now is a serious reduction in family reunification opportunities created by the current "freeze" of the assisted relative class. This is creating great hardship for people whose sense of family and family responsibility is much broader than the "family class" defined by our Immigration Act.

Recommendation 5

(5A) The enforcement function in Employment and Immigration Canada should more actively seek out illegal immigrants. Otherwise, this responsibility should be returned to law enforcement agencies.

Canadians generally do not view the need to track down illegal immigrants as a priority concern for either the Employment and Immigration Commission or law enforcement agencies. There are other more serious employment and criminal concerns that have higher priorities for the allocation of our national resources. Enforcement systems within Immigration already exist and have the competence to fulfil enforcement requirements. Besides, the Advisory Council brings forward no evidence that they need to be "more active."

(5B) All deported aliens should be fingerprinted and documented. This information should then be made available to law enforcement agencies.

Implementation of this recommendation would result in immigration offences becoming criminal offences. The power to fingerprint and document already exists and is applied to those people who land in detention centres. However, it should not become standard procedure. Immigration problems should not result in criminal records.

Recommendation 6

(6A) The sanctions outlined in the 1976 Immigration Act for those knowingly engaged in the employment of illegal aliens should be applied more stringently, following a publicity campaign on this subject.

The Advisory Committee offers no evidence that present sanctions are not being applied stringently enough. Besides, in our view, the real problem in the workplace is the exploitation of illegals and other marginalized people. This is a matter of great concern and needs careful study and action, but it is not an issue central to the concerns of the report.

(6B) More specific guidelines should be established to describe the documents of identification which employers or unions must obtain from prospective employees.

(6C) A study should be launched to determine how to make the Social Insurance Number (SIN) card system more secure.

We oppose these recommendations because of their implications for the rights and freedoms of all. These controls, designed to control a relatively small number of people, would be imposed on the entire Canadian public. They are not justifiable.

Recommendation 7

An information campaign should be launched both in Canada and abroad to educate potential immigrants regarding proper immigration procedures and the realities of the Canadian context, thus diminishing the influence of unscrupulous agents on the flow of illegal immigration.

We fully agree with this proposal to stem the problem at its source. What steps have been taken overseas and in Canada to follow up on the discussion paper, "The Exploitation of Potential Immigrants by Unscrupulous Consultants"? Another serious lack of information exists for potential refugee claimants. Where is the pamphlet "Claiming Refugee Status in Canada"? We cannot understand why this pamphlet is unavailable. We have found that potential claimants often decide not to make a claim once they understand the purpose and process of claiming status in Canada. Many unfounded claims result from lack of correct information rather than an intent to abuse the system.

Recommendation 8

A review should be made of the process for funding non-governmental immigrant service agencies in order to either eliminate duplication of services or to expand their use, where warranted.

We do not understand how this recommendation relates to the topic of the report.

CONCLUSION

We hope that your report to the Minister will propose a non-punitive settlement program for people who are in Canada without status, and that whatever preventive measures are proposed do not threaten, for the sake of efficient enforcement and border control, cherished rights and freedoms of Canadian citizens.

We look forward to reviewing your recently released preliminary assessment and hope to have some dialogue with you before your final recommendations to the Minister.

Yours sincerely,

Robert G. Lindsey

Robert G. Lindsey
Chairperson, Inter-Church
Committee for Refugees

RGL/pb

APPENDIX S

Province of British Columbia

OFFICE OF THE MINISTER

Ministry of Labour

Parliament Buildings
Victoria
British Columbia
V8V 1X4

April 12, 1983

Honourable Lloyd Axworthy
Minister of Employment & Immigration
Ottawa, Ontario
K1A 0J9

Dear Mr. Axworthy:

Thank you for your letter of March 3, 1983, enclosing a copy of Mr. W.G. Robinson's report.

Mr. Robinson is to be commended for his in-depth study of issues and questions associated with illegal immigrants. We have also reviewed the recommendations made by Canada Employment and Immigration Advisory Council on persons living in Canada without official status.

In the absence of reliable data, it is difficult to assess the magnitude of the problem. Although it is not fully explained how the Advisory Council arrived at their figure of 200,000 illegal aliens, we do not question their contention that illegal immigrants in Canada constitute a significant problem. We suggest, however, that new avenues be explored to arrive at more reliable estimates of the number of illegal immigrants.

We concur with the rejection of recommendations for another amnesty. The present rules and regulations appear to serve the goals of fairness and flexibility more than adequately.

Considering the choice between establishing exit controls and strengthening primary inspection capability, it appears to us that the latter deserves strong preference, for financial reasons as well as for reasons of effectiveness.

Strengthening of primary inspection capability of the port of entry through better training of customs officers in immigration matters is an attainable objective. Such training should be of an on-going nature to ensure that the customs officials are fully familiar with both the changes in immigration regulations and new methods of detection.

We suggest that consideration should also be given to extension of the visa system to all those countries who are potential sources of illegal immigrants. The visa officers abroad are in a much better position to detect

/2 . . .

individuals who are not legitimate visitors than the customs officers who are required to process visitors within a few minutes at the port of entry. The visa system will also strongly reinforce the effectiveness of the improvements in primary inspection procedures as suggested above.

It may also be of some interest to review current enforcement policy. If immigration officials are to deal effectively with illegal immigrants and criminal elements, they require legal authority, professional training in methods and techniques of detection, and a closer relationship with law enforcement agencies.

Illegal immigrants usually come to Canada to find employment. As Mr. Robinson points out, "employment provides one of the most fertile areas for enforcement in relation to illegal immigrants". We favour his suggestion that Subsection 2 of Section 97 of the Act be significantly changed as recommended on page 38 of the report. The Commission may also consider printing such information along with the warning that, "It is illegal to employ any persons other than a Canadian citizen or permanent resident" on the Social Insurance Card.

We do not favour the "sponsored visitor" proposal as an alternative to the present visa system. The agitation against the "visitor visa" appears to have subsided since it was based either on emotions, misinformation, or at the suggestion of unscrupulous consultants. We are not aware of incidents where visa requirements caused hardship or inconvenience to bona fide visitors during an emergency such as illness or death in the family. As a matter of fact, we have heard many positive remarks about the quality of service provided by the Canadian visa staff in New Delhi.

In conclusion, may I add that our response to Mr. Robinson's report is primarily based on the limited information we have on the subject of illegal immigrants. I am confident that with input from other provinces, interest groups, individual citizens, and the Commission's own competent staff, you will be able to formulate an efficient and effective system and policy of dealing with the problem of illegal immigrants and visitors who do not intend to return to their country of origin at the end of their legal stay in Canada

Yours sincerely,

R.H. McClelland
Minister

APPENDIX T

PRINCE EDWARD ISLAND

DEPARTMENT
OF
LABOUR

MINISTER OF LABOUR
P.O. BOX 2000
CHARLOTTETOWN, P.E.I.
C1A 7N8
(902) 892-3416

6 April 1983

Hon. Lloyd Axworthy
Minister of Employment & Immigration
13th Floor - Place du Portage
Phase IV - 140 Promenade du Portage
OTTAWA, Ontario
K1A 0J9

Dear Lloyd ~~Mr. Axworthy~~:

Thank you for the opportunity to comment on the Illegal Immigrants Issues Paper prepared by Mr. W. G. Robinson.

It is apparent that Mr. Robinson has carefully addressed the sensitive illegal immigrants issue. It is essential to balance discretion with effective laws in order to ensure that the illegal immigrants issue is addressed.

Prince Edward Island has not been an attractive location for illegal immigrants, as our small size permits easy detection, thus I cannot comment on the estimate of 200, 000 illegal immigrants in Canada.

Obviously the type of enforcement and the diligence of that enforcement depends on the priority that is assigned to dealing with illegal immigrants. From Prince Edward Island's point of view, illegal immigrants are not a major problem hence detection to the extent of invasion of privacy, should not be a high priority.

With respect to the means of dealing with illegal immigrants, I do not support a general amnesty as it rewards persons who have not followed the regulations. I do think that a better electronic system of exit control is required, to reduce the problem of illegal immigrants.

Removal of the word "knowingly" from Section 97 would mean employers could be prosecuted for hiring an employee who was found to be an illegal immigrant even if they did not know they were illegal. Thus, I support retention of Section 97 as it currently reads. If "knowingly" should be removed, requiring employers to submit a request for confirmation on the status of a potential employee may result in discrimination against those persons with names associated with particular nationalities. Employers may choose to hire employees not requiring a confirmation of status.

Enforcement in this province should continue to be reactive (e.g. respond to the tips of informers) rather than proactive, (investigation based solely upon suspicion), as a shift towards proactive enforcement would infringe on individual freedom as well as increase the cost of enforcement.

I would also support the removal of visa exemptions for those countries that have high rates of illegal immigrants. The "sponsored" visitors idea would also seem to have merit as it would put the onus of enforcement responsibility squarely on the shoulders of the sponsor.

I appreciate the offer of further discussions with Mr. Robinson, however, at this point I do not think it is necessary.

I look forward to further consultation on other immigration matters.

Yours sincerely,

George R. McMahon
George R. McMahon, Q.C.

/mjc

APPENDIX U

THE CANADIAN HORTICULTURAL COUNCIL

3 Amberwood Crescent, Nepean, Ontario, Canada K2E 7L1
Telephone: (613) 226-4187 Telex: 053-3690

June 2, 1983

Mr. W.G. Robinson, Special Advisor,
Immigration Policy,
Employment & Immigration Canada
Box 2090, Station B
Hull, Quebec
J8X 3Z2

Dear Mr. Robinson:

On behalf of members of the Canadian Horticultural Council, may I express our appreciation to you for your offer of an opportunity to respond to the Illegal Immigrants Issue Paper prepared on February 15th, 1983. Unfortunately, it arrived at our national office at an extremely busy time of our fiscal year and, consequently, we were unable to respond by the deadline requested by you. Be that as it may, we would respectfully submit the following for your consideration on the chance that this issue is still under review by the Department of Employment and Immigration.

In respect to the issue of immigration, it is my belief that the ultimate responsibility for policing immigration in Canada rests with officials of the Department of Employment and Immigration or the appropriate federal body in Canada. It would seem to me that stricter border controls could possibly be the answer to current dilemmas being faced by the Department. Prior to entry into Canada, any visitor on his or her visa should specify the likely time-period that he or she may be in our country. This could be entered on some form or computer program which could automatically trigger anyone in violation of the time specified on the visa. Of course, it would be necessary for Employment and Immigration Canada to monitor people's exits from the country in order that this information is indeed triggered. If there are violations, then it should be turned over to the appropriate law enforcement agency which would have jurisdiction over these matters. Although some may have difficulty with the idea of stricter visa controls, in response I would respectfully suggest Canada's record on immigration is much more favourable than most countries. Further, stricter control seems the only viable way of resolving the problem.

The suggestion of a conditional settlement program as outlined on page 15 through 17 in the paper provided to us, seems to be a most plausible course of action. Each immigrant would have the opportunity to come forth and clearly state their situation with the officials of Employment and Immigration Canada. By providing them a six month hiatus period, this will allow such immigrants to provide proof of employment or adequate sponsorship within our country. The proof of this would subsequently allow such immigrants the opportunity of permanent residence in Canada. For all those who fail to come forward it would suggest to me that they are unable to provide the department with adequate reasons for remaining in our country. Consequently, all such immigrants should then be required to leave Canada. Of course, there should be some case by case discretion that would address various humanitarian issues such as the possibility of political asylum, health or family reasons.

The one area which would cause our industry the most concern would be in the area of enforcement in Canada. In this regard, the section on prosecution of employers contained on page 36 through 38 of the issues paper raised my most serious concern. While it is true employers would be a plausible means of identifying illegal immigrants, we have some concerns in respect to their liability for prosecution. As immigration is indeed the responsibility of the Department of Employment and Immigration Canada, and not that of individual employers, it strikes us as somewhat harsh that employers bear such responsibility. Be that as it may, there is an area of responsibility for individual employers to comply with legislation in this area. In particular, we would oppose removal of the word "knowingly" from section 97 of the Act. If this is removed, then any employer would ultimately, without recourse, be guilty upon investigation and subsequently proof of an offense. Horticultural employers are faced with a tremendous seasonal burden of obtaining employees to get their crops off in adequate time. Without an adequate work force, their whole year's investment of time and dollars can go down the drain unless this crop is harvested. In many cases, there is an extremely high turn-over of employees on a day to day basis. The ability of an employer to maintain records even for unemployment insurance regulations is indeed difficult. In this regard, we are currently seeking some relief from the department of Employment and Immigration for the change in regulation 16 under the Unemployment Insurance Act which has now placed an even greater administrative burden on our employers. As a result of this change in legislation, Canadian producers will be hard pressed to meet the additional paperwork burden which has been imposed on them by the Department. This has some relevance in respect to the prospect of placing the burden of identifying illegal immigrants as an employer responsibility. This would add just one further burden to our producers who are already hard pressed to meet other government regulations and requirements. Legislating such a provision would have serious repercussions to our producer-employers. Removal of the word "knowingly" from section 97 of the Act would put Canadian producers in an extremely tenuous situation.

We certainly agree that the Department of Employment and Immigration has a serious problem in respect to illegal immigrants which requires attention. We sincerely hope that those involved will develop a policy which can adequately address the problem. Although late, we hope our comments will be of some use to you in your review or possibly to the Minister of Employment and Immigration. If any further clarification on any of our concerns is required, please do not hesitate to contact us at our National Office. Once again, we appreciate the opportunity of responding to your paper and regret that we could not get it into you at an earlier date. Kindest regards,

Yours very truly,

D. Dempster

DD/nt

Danny Dempster,
Executive Vice President

April 11 1983

W.G.Robinson
Special Advisor
Immigration Policy
P.O. Box 2090,Station "B"
Hull,Quebec.

Dear W.G. Robinson,

As a private citizen I cannot help thinking that the Illegal Immigrant question is, like so many others, a matter of responsibility. Resposibility must lay with those accountable for creatingg the situation.

I wondered how soon in your paper should the spectre of the weepy wide eyed child be raised. The second page. I wonder how many people really care about these tragic children except in an ineffectually emotion al way.

You suggest the possibility that we, as legitimate law abiding citizens somehow should take some of the respobsibility for children we neither sired nor counselled to be sired. Their own parents obviously ignored this fact while having them in a country which they were not lawfully residing in. Their own parents ignored their "plight" . Why are we suddenly to be held responsible for the results of illegal acts of others?

I am not responsible for the results of their illegal acts in this country nor their acts of ignorance and savagry in other countries no matter how deeply I personally feel their suffering.

The fact is that people who come here and stay illegally----break the law. They are criminals. Conditions in Canada will not improve if we accept [illegible]00,000 new citizens whose very first act is to break the law. What kind of future citizens will they be? What sort of respect do they show initially for the government of Canada, and what will their future stance be when given an amnesty? They will degrade the quality of Canadian life.

The behavior of Illegal Immigrants isperfectly in keeping with the way they have always lived and that has its roots firmly planted in the horrible life styles which they wish to escape. Immigration does not solve the problems of the worlds countries which live in irresponsible over population and ignorance.

I find it hard to accept the idiotic lenient positionthat;

"legalisation appears to be the only practical and humane approach to bona fide (non criminal) illegal immigrants."

They are criminal! It is a question of law. They have broken the law. There only crime is not just wanting to come and get a better job. They take jobs from legally naturalized immigrants and native born descendants of them.

Why not legal'any or every other crime because prisons certainly aren't 'humane ' are they?

There is a dangerously leniant attitude present in Canadian society which suggests that crimes should be made retroactively legal. This is as bad as the other end of the scale the fascist police state.

Your department has already said that the Nov 30 1972 amnesty was a last chance. If you continue to make last chances the credibility of the Canadian government will fall into further disrespect. Your paper mentions quite correctly the amnesty immigrants,and legal immigrants who took the proper channels. They will be discriminated against and will feel hostile to a government that does not keep its word.

The Conditional Settlement is just a white wash . It is just the same as an amnesty and all the arguements against it hold true. There are provisions already in the Act ,which you are correct in mentioning,for political refugees and "special cicumstances".

The case is clear. The kind of over reaching sympathy for criminals expressed continually throughout your paper goes hand in hand with the present rise in disprespect for law and decreasing safety for law abiding citizens. It is harder to keep the law than it is to break it and law abiding citizens deserve some credit and protection from their government for this.

The issue is simple. The laws are clear and are more than humane. There is really no need for discussion. Our country would no benefit from the legalization of 200,000 or so criminal,bona fide or otherwise.

Immigration has always been central to Canadian life. It is important but should be curtailed at this time of high unemployment. When the economy has revived then legal immigrants who have something to offer should be welcomed.

I have only one suggestion in the matter of enforcement and that is that the act should be changed to provide for the confiscation of all assets and property that the illegal immigrant accumulated while working illegally in Canada.

Thank you for listening to my views

Yours sincerely

W. Seeze

Wade Seeze

Wade Seeze
1340 Burnaby Street # 304
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APPENDIX

545 Soudan Ave.,
Toronto, Ont. M4S 1X1

W. G. Robinson,
Special Advisor to the
Minister of Employment and Immigration
P.O. Box 2090, Station "B"
Hull, Quebec J8X 3Z2

Dear Mr. Robinson: Re: Illegal Immigrants

Immigration is people. It is people obeying the laws and it is people circumventing those same laws. The moment we condone the circumvention, we have negated the law. It is as basic as that.

Why do we have illegals? Largely they are people who would not qualify as immigrants to Canada. Obviously they are not people of strong moral convictions. They conspire with others to beat the system. As they sit around the kitchen table or living room to plot the outwitting of the authorities, what are their children learning? They are learning by example that the laws of the land (Canada) are to be treated with disrespect and are to be broken with impunity.

If people choose to come as visitors and disobey our laws by staying as illegals, the problems they confront are theirs, not ours, as they would be with anyone who performs an illegal act.

..2

The Immigration Department in Ottawa is looked upon by the general public as flaccid and ineffective. Every time it yields to the pressure of yet another "sob story", it erodes the public's respect for it. It is never (or hardly ever) seen as standing firm in defense of its policy, indeed its policy seems to adjust to the party who makes the loudest hue and cry.

That is a large part of our problem. Like Henny Youngman, the department lacks respect! If it grants yet another amnesty for illegals, it might as well pack up its bags and leave. No one will take it seriously again.

As we have said, immigration is people. The department apparently has a 'fix' on the type of people who stay in Canada illegally. The department knows all the angles...the woman who comes in as a domestic, leaves to work in a factory, produces a child, cries foul when she is asked to leave. They have this type of story on file ad nausem. What to do?

Those illegals are making contact with someone in the community, family or friends. There should be real penalties for harboring and abetting. Anyone found doing this should be deported themselves or should not be permitted to have any further members of their family enter Canada, as a visitor or immigrant, for an extended period of time.

..3

The department is far too namby-pamby when it comes to the definition of 'family'. When we consider what a large percentage of our immigration quota is usurped by 'reuniting', we question the interpretatinn of the word 'family'. As it stands now, it is obviously far too wide. A family should consist of the mother, father and children under age. None of this uncle, aunt, cousin nonsense. The elderly should only be admitted where there are children to assume total responsibility for their maintenance.

Adult children should be required to qualify strictly on their own merit. The domestic who enters Canada claiming she is childless and then suddenly remembers, when it is convenient, that she has a half dozen children back home should be held to her original statement. As far as Canadian immigration is concerned, she is childless and not any number of Toronto Star front page sob stories should influence that. If she wants to be reunited, let her go back to her children.

The majority of illegals come to Canada by air apparently and only a limited number of Canadian air fields can accommodate international flights. In this age of hi-tech, surely someone can program a system of checks and balances to maintain control. We can't believe it can't be done. All we need is the will.

..4

So let's get hi-tech working for us in the immigration department.

And let's remove the tunnel vision that blinds the department to the fact that its lack of respect for its laws causes every Canadian to lose respect for every law. It's as basic as that.

Sincerely,

Ina Van Dyck and many others with whom I have conferred.

Ina Van Dyck

P.S. I was born in Canada and Mr. Axworthy, being a Westerner, will understand at once the birth certificate definition of my birthplace: Sec.27, Tp33, Rge13, W3rd, Sask.

APPENDIX X

UNITED NATIONS
HIGH COMMISSIONER
FOR REFUGEES
Branch Office for Canada

NATIONS UNIES
HAUT COMMISSARIAT
POUR LES RÉFUGIÉS
Délégation pour le Canada

280, Albert Street
Suite 401 - K1P 5G8
OTTAWA, Ontario
Canada

Cable address: HICOMREF OTTAWA
Telephone: 232 0909

BY MESSENGER

Mr W.G. Robinson
Special Advisor, Immigration Policy,
c/o Ms Jill McCaw,
Place du Portage,
Phase IV, 14th floor
Hull, Québec.
J8X 3Z2.

5th April, 1983

Dear Mr. Robinson,

Re: Illegal Immigrants Issues Paper

Thank you for sending to this office for comment, your paper dealing with illegal immigrants issues, which arrived under cover of your letter dated 1 March 1983. We have read it with great interest. We offer you the following remarks:

I. THE SCOPE OF THE PROBLEM

We agree that the strict application of immigration law must be "tempered with discretion" in cases which expose humanitarian aspects. Indeed, when the case is one relating to refugee status, the international instruments oblige Canada to act in a humanitarian way.

From our vantage point, we come into direct contact with persons who approach us for information on Canada's refugee status determination procedure. Most of these persons either are in Canada with valid visitors' visas, or have recently seen the expiration of those visas. During my two and one-half years as Legal Advisor in this UNHCR Branch Office, I have not come upon one case of a person intending to claim refugee status who has been "underground" and who is not willing or endeavouring to make himself known to Immigration authorities for the purpose of making a claim to refugee status. Whatever the number of illegal immigrants in Canada is, the number of potential refugee claimants is very small.

.../2...

This, we believe, is due to easy accessibility to the refugee status determination procedure, and to the publicity it received from the Task Force Report on the subject, as well as to the Minister's subsequent announcements in relation to it. In addition, it appears that most bona fide refugees endeavour to identify themselves as quickly as possible to Immigration authorities, in order to benefit from the protection they will receive as refugees, as well as to put stability into their lives.

It has been said that the refugee status determination procedure is used by persons seeking to prolong their sojourns in Canada. While this is undoubtedly true, it is only true to a small extent. Since the statistics are not ours to expose, I am sure Mr Stern could furnish you with the figures concerning how many claims are considered to be manifestly unfounded. Moreover, within those numbers will be even smaller ones which make up the total of claims which are clearly abusive. Nevertheless, such claims do put undue pressures and backlog problems on the refugee status determination procedure. An "amnesty", whether conditional or otherwise, would go some way to easing this problem, and allow the procedure to deal speedily with the bona fide claims.

In addition to coming into contact with prospective refugee claimants, our office is also approached by what the U.N. General Assembly has described as "persons in a refugee-like situation". These are persons who, while not having been victims of persecution themselves, are nationals of a country in great turmoil, where living in a state of security has become untenable. Canada has reacted to the situation of such persons by offering them the chance to become landed while inside this country. The most recent example relates to Iranians in Canada as of 1 March 1983.

Our experience has been that many persons illegally in Canada, and belonging to groups which could benefit from these programmes, do not know about their existence. Better publicity of these programmes would therefore decrease the ranks of the illegal immigrants, as well as ease the burden on the Immigration enforcement authorities. We believe a like level of publicity ought to be given for persons coming from countries to which Canada does not deport. Perhaps this will encourage such persons to come forward voluntarily, rather than placing the burden on the enforcement branch to search them out.

.../3..

With regard to the question of why persons become illegal immigrants in Canada, we believe that there is a correlation between illegal entry and the weaknesses in the overseas selection procedures. The Refugee Status Advisory Committee does see from time to time claimants who come to Canada after their applications at a Canadian mission abroad has been rejected. Either they failed the process because they were not recognised as refugees, or because it was determined that they could not successfully settle in Canada. If the Minister does recognise the person as a refugee, and that person successfully settles in Canada, then one must question the tests being used overseas to determine refugee status and to decide the probability of successful settlement.

It has also occurred that families of refugee claimants arrive in Canada and become illegally inside the country. This can happen because the claimant is often the sole means of support for the family, and the family finds life difficult without the presence of the claimant. By support, we mean both the psychological and financial kinds. The families of refugee claimants are not issued visitors' visas by Canadian missions abroad, for reasons which we understand. The solution to this problem lies in a speeding up of the refugee status determination procedure - a solution which is currently being strived for. However, and equally important, is the clear priority which should be given to the processing of family reunification requests once persons have been recognised as refugees. Giving priority to refugee family reunifications would be consistent with the principles expressed in the Final Act of the 1951 Convention Relating to the Status of Refugees that "Recommends Governments to take the necessary measures for the protection of the refugee's family especially with a view to ; (1) Ensuring that the unity of the refugee's family is maintained, particularly in cases where the head of the family has fulfilled the necessary conditions for admission to a particular country."

II. EXCEPTIONAL TREATMENT OF ILLEGAL IMMIGRANTS PRESENTLY IN CANADA

We have already expressed the view that we would welcome some kind of legislation programme which would in turn relieve the refugee status determination procedure with regard to abusive and manifestly unfounded claims. We suggest your model of a case-by-case approach, using specific, and well-publicised guidelines, to be dealt with by persons who understand well the humanitarian nature of the programme, be considered. Indeed, these are the general aspects of the refugee status determination procedure, at its first instance, and in themselves are characteristics of a fair and humane system.

.../4..

III. BORDER CONTROL

In this regard we wish to caution that, whatever border controls are envisaged, the following basic requirements be scruplously applied.

"The competent official (e.g. immigration officer or border police officer) to whom the applicant addresses himself at the border or in the territory of a Contracting State should have clear instructions for dealing with cases which might come with the purview of the relevant international instruments. He should be required to act in accordance with the principle of "non-refoulement" and to refer such cases to a higher authority".

This requirement was recommended by the Executive Committee of the High Commissioner's programme, at its twenty eighth session 10 October, 1977.

IV. ENFORCEMENT WITHIN CANADA

We are also concerned about the idea that the enforcement function be given to law enforcement agencies. We agree with you that the nature of illegal immigration itself does not lend itself easily to the kind of enforcement activity relating to criminal elements. This is even more the case where the illegal immigrant may be a refugee whose past experiences in his own country give him heightened fear of the enforcement authorities of any country.

The 1951 Convention relating to the Status of Refugees takes this matter into account, and also acknowledges that by the nature of their problems, refugees may indeed have to enter or be present illegally in a country. Article 31(1) says :

> "The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of Article 1, enter or are present in their territory without authorisation provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence."

.../5..

V. EXTENDED VISITOR VISA REQUIREMENTS

In this regard, we echo our earlier words, that the proper application of procedures overseas which deal fairly and generously with refugees and their families will ease abuse of the visa system.

Concerning the visa requirement, we believe that guidelines for its imposition should be formulated. If an influx from a certain country causes a marked increase in the number of claims to refugee status, a visa requirement should be imposed only if the RSAC has informed the Minister that the majority of those claims are abusive, rather than simply unfounded. In this matter, the RSAC should be closely consulted given its close study of each of the cases which form a part of this influx.

V. CONCLUSION

We agree with you that immigration "is very much a human process". We wish to underline that for the refugees who are enmeshed in this process, the consequences after the process has been completed can be profound. For this reason we ask that any policy formulated with regard to illegal immigrants in Canada should take into account the refugee component in that population and should be sensitive to the views we have expressed above.

We thank you very much for this opportunity to present our views to you. Should you require it, we are at your disposal for further discussion.

Yours sincerely,

Susan Davis

Susan Davis
Legal Adviser

c.c. UNHCR Headquarters, Geneva.

APPENDIX Y

DAN HEAP, M.P.
Spadina

HOUSE OF COMMONS
CANADA

Toronto office
323 College Ave.,
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Ottawa office
House of Commons
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Ottawa, Ontario
May 19, 1983

W.G. Robinson, Special Advisor
on Illegal Immigrants
and
The Honourable Lloyd Axworthy,
Minister of Employment & Immigration
House of Commons
OTTAWA, Ontario

Gentlemen:

In commenting on the matter of illegal immigrants in Canada I wish to suggest that most of our attention be focussed on the causes of illegal immigration and how we might address them to reduce the problem.

In so doing, we must first reject the suggestion that future illegal immigration can be brought under control by tighter border controls alone. That would be an expensive and insensitive approach and one subject to potential abuse.

I wish to emphasize a more humane approach, supported by many community groups, the Law Union of Ontario and the excellent brief from the 'Immigration Section of the Canadian Bar Association. Their approach has been to recognize that current immigration procedures, priorities and policies have created a desperation that brings many to attempt to enter or stay in Canada illegally.

While there are many such difficulties, I wish to focus on what I see as by far the most important and justifiable area of concern; that is the family.

I find that it has been the inadequacy of our family reunification program which moves many to immigrate illegally. When my constituency office has come across illegals, they have always had relatives in Canada. Our current Immigration Act is so written that family is defined in a narrow nuclear sense. This does not recognize Canadian tradition or history since many of our founders had extended families. Nor does it acknowledge that the bonds between extended family members are very strong throughout most of the world. The assisted relative class with the requirement of a pre-arranged approved job offer is little different from the independent class.

.../2

I value our continued support of the family class applicants and the priority they are given. However I must seriously suggest that we extend this priority to the extended family.

Specifically I propose that we:

1. Delete selection criteria resting solely on occupational demand, in the assisted relative class;
2. Amend the family class so as to include unmarried children of any age;
3. In considering a sponsored application, before it is refused, consult the sponsor or applicant about concerns that might lead to refusal. Often these cases arise from misunderstanding, and may need discretionary consideration. I am very glad of your decision to allow oral hearings for refugees, and hope you will extend a similar procedure to family and assisted class applicants;
4. Re-assess the priorities reflected in the location of many of our overseas offices, to give a fairer, more balanced approach. We have 5 offices in the U.K., 10 in the U.S., 1 in India (serving eight other jurisdictions), 3 in South America, Central America and the Caribbean, and 4 in France. This is unfair and does not reflect present immigration demand.

Regarding policy toward persons now illegally residing in Canada, I tend to agree with Mr. Robinson's assessment of the probationary settlement or conditional amnesty as unworkable and undesirable. I am strongly attracted to the recommendations of the Bar Association, particularly #10 through #14, and the supporting arguments in the brief. These seem to be humane, (avoiding great hardship to the immigrant and to families) and efficient (avoiding horrendous backlogs).

In closing, I wish to point out that there is no evidence showing that immigrants cause net unemployment. They create more jobs than they take. Therefore we ought to try to regularize their status.

Yours very truly,

Dan Heap

Dan Heap, M.P.
Spadina

APPENDIX Z

CENTRO PARA GENTE DE HABLA HISPANA

CENTRE FOR SPANISH-SPEAKING PEOPLES

582-A COLLEGE STREET, TORONTO, ONTARIO, CANADA M6G 1B3
TELEPHONE (416) 533-8545 (416) 533-0680 (LEGAL LINE)

W.G. Robinson
Special Advisor to the
Minister of Employment and Immigration
P.O.Box 2090, Station "B"
Hull, Quebec
J8X 3Z2

March 25, 1983

Dear Mr. Robinson,

Please find enclosed our comments on the situation of illegal immigrants and proposed solutions to the problem.

Thank you for your attention.

Sincerely

Stephanie Thomas
Staff Lawyer

SLT:TM
opseu 512

The release of the Report on Illegal Immigrants by the Canada Employment and Immigration Advisory Council has provided a focal point for discussion of the issues surrounding the topic of illegal immigrants. We believe that this is a timely and useful exercise for the Canadian public as a whole and the agencies serving the immigrant communities in particular. However, as a multi-service centre focusing on the needs of the Spanish speaking community in Metropolitan Toronto, we are deeply concerned with the implications of many of the proposals contained in the Report. We feel it is important that the Minister be apprised of the sincere concerns which we hold and are therefore presenting this response to each of the report's recommendations for your consideration.

Recommendation 1(a)

> A Conditional Settlement Programme should be estabished whereby persons in Canada without legal status on or before July 1, 1982 be granted temporary resident status for a probationary period of six years before the granting of landed immigrant status. These persons would have to come forward voluntarily and meet certain basic criteria (e.g. no criminal record).

We question the basic premise underlying this recommendation and enunciated in the accompanying commentary--that a penal sanction, a six year probationary period, be applied to illegal immigrants through the very programme which proposes to regularize their status. We feel that such an approach fails to address the question of why many illegal immigrants are presently in Canada and what punitive measures they have already had to endure as a result of their status. Many illegal immigrants are in Canada as a result of the delays and limitations inherent in the present system --in particular the failure of "family reunification" procedures. Others are in Canada as a result of initial ignorance of the law, coupled with fear and sometimes an inability to return to their country of origin. During the time they have spent in Canada illegally they have been totally vulnerable to exploitation of all kinds due to a combination of a lack of legal rights and an inability to enforce what rights they possessed.

A few concrete examples of such exploitation are as follows: a) being subjected to illegal rent increases, often in substandard housing, b) working for less than the minimum wage and statutory benefits, c) suffering sexual harassment on the job, d) being victims of criminal offences such as assaults or blackmail, e) being unable to enforce payment of debts owing to them. Because of their fear of detection, illegal immigrants are victimized in all the above situations. In addition if they have children they are often unable to obtain schooling or medical care for these children.

Illegal immigrants have therefore already been penalized as a result of their status and a further six year probationary period would be excessively punitive, leaving them vulnerable to further exploitation. In effect a lengthy probationary period would deny them the rights accorded landed immigrants and perpetuate the very exploitation deplored in the Report as many would be afraid to assert what rights they possessed for fear of the possible implications to their immigration status, i.e. working for less than minimum wage out of fear that they might be fired and thus jeopardize their eventual landing.

On a more practical level, it is doubtful that the proposed recommendation will be effective. The experience of the amnesty some ten years ago proved that illegals were extremely fearful about presenting themselves until word permeated through immigrant communities that applicants were being landed. Many illegals will be unwilling to present themselves under an uncertain and lengthy programme where there can be no "feed back" of successful results. In this connection, we might also mention that the requirement of voluntary presentation appears arbitrary and unfair. Persons waiting to learn the details of the programme might be apprehended and thus become ineligible for inclusion.

There might also be unfair results for refugee claimants. Due to the provisions of the present law (i.e. no appeal rights or right to work unless their claim is made pursuant to S45(1) during the course of an Inquiry) most refugee claimants elect to make out-of-status claims. If it were to be asserted that they could not present themselves voluntarily for inclusion in the programme as they were already in the enforcement stream, clear injustice would result. For example a refugee claimant who had been out of status for only one day to preserve his appeal rights could be rejected, while an illegal who had used false documentation and worked without authorization for years could be accepted.

A final administrative problem will be the workload imposed on overburdened immigration officers. If counselling is to be provided throughout the process (despite the obvious cost considerations) we question whether existing staff can handle the workload. If no counselling is provided it only emphasizes the purely penal nature of the probationary period as outlined above.

We would therefore recommend against a six year probationary period and in favour of an immediate assessment and processing toward landing. The Report does not specify particular criteria for assessment but we suggest that the only criteria should be those set out in the Act, and that the section 19 criteria should therefore govern exclusion from the programme. We also suggest that there be no requirement of voluntary presentation for inclusion in the programme.

Recommendation 1(b)

> The Conditional Settlement Programme should be in force for a period of three years and should be administered in cooperation with non-governmental, community service agencies.

We agree that the programme be in force for three years as the 90 day period of the previous programme was insufficient for dissemination of information to all those potentially eligible. However once again the point must be made that if the period available for initiation of the programme is over before the first applicants have successfully completed the programme it will be difficult to persuade people to participate.

The notes to this recommendation set out a limited informational and advocacy role for community service agencies which we would be prepared to accept, provided sufficient additional ISAP or other funding would be made available to enable us to carry out these additional services. However we would vigorously oppose any expansion of the role of community service agencies to include any monitoring or "policing functions." Such functions would totally destroy the agencies' credibility in the eyes of the community, and would cast a pall of suspicion over all our other services. It is submitted that all monitoring procedures should remain in the hands of the Commission staff.

Recommendation 1(d)

> The planned annual quota of legal immigrants to be admitted from outside Canada should not be affected by the illegal immigrants that surface thorugh the Conditional Settlement Programme.

We agree that the quota of immigrants not be affected by the number of illegal immigrants involved in the proposed Conditional Settlement Programme.

Recommendation 1(c)

> A secure identification mechanism should be implemented for participants in the Conditional Settlement Programme.

Recommendation 2(a)

> An electronic entry and exit system should be implemented whereby Canadian immigration officials have on record the identity, the country of origin, and the number of aliens entering, leaving, or due to leave Canada.

Recommendation 2(b)

> The Minister should establish a list of reasonable exemptions from the proposed entry and exit control system.

Recommendation 3

> The Primary line of inspection at ports of entry should take into account the necessity for greater control from the point of view of immigration.

We strongly question the advisability and effectiveness of the above recommendations. They contain implications with respect to the civil rights of all persons leaving, entering and living in Canada, and as such should be subjected to intensive scrutiny. There is widespread public apprehension about the enlarging role of government in modern society and in particular about increasing collection and storage of data pertaining to individual activities and possible theft and or abuse of such information. This apprehension is not unreasonable or misplaced, given that a cornerstone of democratic government is individual freedom and responsibility--freedom from undue government interference and responsibility for ensuring that the general will is embodied in policies arrived at through participation in the electoral process. A policy or programme which affects basic civil rights of the entire population must be demonstrated to be wholely justified in that the aim it will achieve clearly outbalances any erosion of rights involved. We do not believe that the proposed recommendations can meet this criteria.

The proposed mechanism will place undue restrictions upon the entire population, including permanent residents and citizens in an effort to apprehend a tiny percentage of the population. Such a practice smacks of the "identity card" regime operating in many countries under oppressive and authoritarian governments. A comprehensive identification system with an aim of aiding in the apprehension of suspected criminals, would not be tolerated by the Canadian public, as it would represent an unjustified infringement of the civil liberties of the population. Surely the argument applies with even greater force to the proposed recommendations which would entail a similar infringement of civil liberties in a programme aimed at an even smaller percentage of the population, whose activities cannot be characterized as "criminal" and who do not pose a threat to the safety and security of society. Obviously a balance must be struck between competing social aims. We feel the above recommendations fail to do so and represent an extreme "overkill" position.

On a practical level, it is doubtful that the recommended procedures would even be effective. Electronic monitoring in the United States has proved an abysmal failure in controlling the flow of illegal immigrants. In Canada we already have a documentation system in place (i.e. number "9" Social Insurance Numbers and documents identifying landed immigrants) which is sufficient to identify persons suspected as illegals. There is no possibility of creating 100% effective controls short of a totalitarian society. Unscrupulous or desperate people will find a way through the system, be it by way of forged documentation, night border crossings or other kinds of illegal entry. The draconian approach embodied in the recommendations cannot be justified in terms of effectiveness, necessity or a reasoned balance of civil liberties in a free and democratic society and we therefore urge the recommendations not be implemented.

Recommendation 2(c)

> The Minister should continue with the current discressionary policy regarding visa requirements.

We accept this recommendation with one proviso. Our Centre serves the Spanish speaking community and our legal clinic provides services to many Convention refugee claimants from Latin American countries. We would be most concerned if the discretionary visa policy had the effect of making it impossible for Convention refugees to reach Canada to claim asylum. Individuals in human rights violating countries are unable to approach Canadian authorities with safety in those countries. Often their only chance for survival is to be able to come to Canada and make an inland claim. Therefore imposition of a visa requirement on any refugee producing, human rights violating country should be avoided.

Recommendation 4

> The system of assessing applicants and categorizing potential immigrants should be reviewed in order to achieve greater efficiency.

We wish to state our enthusiastic support for this recommendation which addresses what we feel is the root of the illegal immigrant situation. As we mentioned in our criticism of the proposed six year probationary period this punitive approach does not take into account why illegals are in Canada. A strong argument can be made that most illegals are a direct product of the inefficient and unrealistic immigration procedures now in effect. The length of time presently required for processing is simply unacceptable. Husbands and wives are expected to remain apart for up to several years, often in circumstances of extreme financial hardship. Is it any wonder that legitimate applicants, faced with seemingly endless delays, and acting under emotional stress, choose to enter Canada illegally to unite with their family? Problems of delay also arise in connection with processing of inland refugee claims. In Toronto applicants who present themselves voluntarily to make out-of- status claims must often wait seven or eight months before their Inquiry is scheduled.

Further delays in scheduling their Examination Under Oath and typing the transcript may mean that it takes two years from the time of arrival to receipt of a decision from the Refugee Status Advisory Committee. During this time they are separated from their families. Even if they are accepted at the RSAC level, a further year or year and a half delay is common for processing family members before they can join the refugee in Canada. Obviously where appeals are taken, the time is further extended, placing intolerable and inhumane demands on people who are often already suffering from the effects of detention and torture.

The system of categorization of family class and assisted relatives fails to take into account the different realities of life in foreign countries. Our Latin American clients have a more extended sense of family structure that that embodied in the Immigration Act Regulations. Often a client has been raised by a relative who does not fit within the family class (i.e. an aunt). The client feels the same emotional ties and sense of responsibility to this family member as a Canadian born client might feel toward his mother--yet he is unable to bring the relative to Canada as the present employment requirements make it virtually impossible for assisted relatives to be accepted as immigrants. Again the immigration system itself provides an impetus towards illegal entry. Therefore we recommend a far-reaching review of the systems of assessing, categorizing and processing potential immigrants and refugees.

Recommendation 5(a)

> The enforcement function in Employment and Immigration Canada should more actively seek out illegal immigrants. Otherwise this responsibility should be returned to law enforcement agencies.

We doubt that a more active enforcement function will significantly reduce the numbers of illegal immigrants,as inherent causative factors exist within the processing and categorization procedures as outlined above. The vast majority of illegals are apprehended as a result of reports to enforcement by their friends, relatives or acquaintances. In view of this fact, the cost effectiveness of an increased enforcement function is questionable and we would suggest that monies could more effectively be applied to hire more staff to speed up processing. In addition we are concerned with possible persecution of visible minority groups, especially if the enforcement function were transferred to law enforcement agencies. Police officers might see this as a carte blanche to investigate public meetings and organizations of visible minority groups. This could lead to increased racial tension in immigrant communities. In short we feel the social and monetary costs outweigh the benefits.

Recommendation 5(b)

> All deported aliens should be fingerprinted and documented. This information should then be made available to law enforcement agencies.

The power to fingerprint deported aliens already exists under the Immigration Act. However,standard procedures do not encompass such fingerprinting, and we oppose any change on the ground that immigration offences are not analogous to criminal offences and should not be treated as such. Individuals involved in the criminal process will have been fingerprinted as a matter of course.

Recommendation 6(a)

> The sanctions outlined in the 1976 Immigration Act for those knowingly engaged in the employment of illegal aliens should be applied more stringently following a publicity campaign on this subject.

We are in agreement with this proposal but again must question the cost-effectiveness of the advertising campaign.

Illegal immigrants are generally employed in large groups in an identifiable manufacturing sector, rather than as single employees in small businesses. Immigration officials are aware of target factories in their areas and the employers are also aware of the law, though they choose to disregard it in their search for cheap labour. Therefore the benefits of a costly publicity campaign would be questionable.

Recommendations 6(b) and 6(c)

> More specific guidelines should be stablished to describe the documents of identification which employers or unions must obtain from prospective employees.
>
> A study should be launched to determine how to make the Social Insurance Number (SIN) card system more secure.

We feel these proposals raise the civil liberties concerns similar to those outlined in our comments on Recommendations 1(d), 2(a), 2(b) and 3. We stress that these controls would be imposed on the entire Canadian population in an effort to apprehend a tiny minority. On balance, we do not feel they can be justified.

Recommendation 7

> An information campaign should be launched both in Canada and abroad to educate potential immigrants regarding proper immigration procedures and the realities of the Canadian context, thus diminishing the influence of unscrupulous agents on the flow of illegal immigration.

We completely support this recommendation. Working in an immigrant community we are aware of the unscrupulous practices employed by some agents and the destitution and misery they can cause. We also feel that widespread dissemination of accurate information about the current Canadian reality and immigration laws could be very effective in stemming the tide of illegal immigrants. Many people facing dreadful economic conditions in their home country act in desperation by coming to Canada without benefit of knowledge of Canadian laws or economic realities. Accurate information would allow them to make a more realistic assessment of their situation.

Recommendation 8

> A review should be made of the process for funding non-governmental, immigrant service agencies in order to either eliminate duplication of services or to expand their use, where warranted.

We are not opposed to a review of the funding process for non-governmental immigrant service agencies. If in fact, duplication of services exists, a review is in order. However it is difficult for us to understand where such duplication could exist, given the unprecedented demand for service which we have experienced over the last year. For example our summary advice statistics for our legal clinic show a 59% increase over the previous year. We would be very interested in having some input in any review as we feel we are in a position to assess the level and type of demand for services.

In connection with any possible expansion of services we also have several comments to offer. As we are presently stretched to the breaking point to meet the increased demand for our services, any expansion of our role with respect to the proposed Conditional Settlement Programme, would necessitate a corresponding increase in funding. The current ISAP funding structure would obviously have to be altered to encompass individuals outside the present criteria (i.e. individuals here more than three years and illegal would have to be included), were our role to expand.

We must caution however, that while we would accept a counselling and advocacy role in a Conditional Settlement Programme, we would not accept an enforcement or "probation officer" role. Any enforcement role would totally destroy our credibility and usefulness in the community. It would jeopardize the sucess of all our other programmes and services and be totally inimical to what we and our community boards perceive as our role in the community.

We do not wish to end in a completely negative or critical vein. It is our opinion that given the short-comings we perceive in the Advisory Council's Report, that further investigation of the problems connected with illegal immigrants should be undertaken. In this light we would like to offer what we hope are some constructive suggestions.

Our first suggestion has to do with an analysis of the present situation with respect to the extent of the problem. The Council's Report suggested a figure of 200,000 illegals in Canada and noted that estimates of numbers varied widely. In our opinion it is essential to arrive at a fairly reliable and substantiated estimate of the number of illegals to properly propose a solution. Our impression is that the number is probably lower that that quoted in the Report, although this is obviously statistically unsubstantiated and based purely on our perceptions of our immigrant community. We feel that the extent of the problem could largely determine the approach to the solution and that this information is essential for a fully developed and reasoned policy.

In particular a reliable estimate of numbers ties in very directly with our criticisms above of proposed enforcement step-ups through electronic monitoring, reporting, fingerprinting, etc, If substantially fewer than 200,000 people are involved,it further strengthens our basic argument regarding civil liberties. Therefore we would caution against adoption of an "enforcement based approach" as being both ineffective and an unwarranted intrusion upon the rights of the vast majority of people visiting and living in Canada. We do not believe that an "enforcement approach" can provide any sort of long-term resolution to the situation. In this regard our third suggestion would involve an analysis of the factors causing illegal immigration to Canada. Obviously we are unable to affect the general social, political and economic climates of countries producing the flow of illegals to Canada. However as we have stated earlier, we believe it it essential that we effect changes where possible, and where our Immigration policy and administration themselves create conditions favouring illegal immigration, we suggest they be examined and reformed. Emigration demography has traditionally been analysed in terms of both "push" and "pull" factors. It would appear fruitless to on the one hand step up enforcement measures while on the other hand retaining factors in our policy and administration which serve as a "pull" factor for illegal immigrants.

Our last suggestion concerns visa requirements. While we can see the attractiveness of increasing visa requirements in terms of cost-effectiveness and simplicity, we are very concerned about the resultant effects on Convention refugees. We strongly submit that it would be a total departure from the humanitarian traditions associated with Canada if visa requirements were to be imposed on refugee producing countries. In this respect we would have very serious concerns about imposing visa requirements on such countries in Latin and South America. Because of their geographical location in many instances Canada and the US provide the only realistic and affordable place of refuge for persons suffering severe persecution in such countries. The socio-political situation in many of these countries is such that claimants cannot possibly approach Canadian officials inside these countries to make refugee claims as their lives would be further imperilled by the mere fact of approaching Canadian authorities whose offices can be easily watched by government security forces. In such situations the refugee claimant has no viable alternative but to make his way to Canada or the USA to make his claim in safety, upon arrival. Imposition of visa requirements on Latin American refugee-producing countries would cut off the only available avenue of escape in may cases. We would strongly protest such visa requirements and would urge that they not be imposed.

Stephanie Thomas
For the Centre for Spanish Speaking Peoples
March 25, 1983

APPENDIX AX

290 Mary Street, N
Apt. 204, Oshawa, Ontario.
L1G 5C8.

March 20/83.

Mr. Axworthy
M.P.

Sir,

There is quite a lot of talk about illegal immigrants living in Canada being given Amnesty. We would like to express ~~of~~ our deepest feeling in saying that we think this is very unfair to those who have been trying for several years to gain admission in the proper and legal way.

Amongst those are my brother and sister who are presently residing in Guyana, South America. They have sought admission, unsuccessfully for several years, through the proper channels. God knows why they are turned down and so many others are allowed in only to live on welfare, the taxpayers expenses. We are financially secure and have a house with 3 levels over 3000 ft^2 of living. Together our salaries exceed $50,000.00. What else can a person do to get a relative closer.

We are alone. I do not have one single relative, neither do my husband, in Canada. It gets lonely and God knows we have worked hard over the last 8 years and have never been unemployed. We would appreciate if you can do something to help our relatives.

Yours truly
SITA Y. RAMBAJAN

APPENDIX BB

KNAZAN, JACKMAN & GOODMAN
BARRISTERS AND SOLICITORS

165 SPADINA AVENUE
SUITE 33, TORONTO
ONTARIO M5T 2C4
TEL.: (416) 596-8520

BRENT KNAZAN
BARBARA JACKMAN
NANCY GOODMAN

May 25th, 1983

Mr. Gerry Robinson,
3200 - 4 Bentall Place,
1055 Dunsmuir Street,
P.O. Box 49360,
Vancouver, B.C.
V7X 1P2

Dear Mr. Robinson:

Re: Recommendations on "Illegals"

As was explained to you on the telephone today, we have drafted further recommendations respecting the processing of humanitarian and compassionate cases by the Immigration Commission. We are forwarding them to you on behalf of the Law Union of Ontario. We have not sought approval from the Immigration Section of the Canadian Bar Association as the procedures for obtaining approval are too lengthy to re-embark on at this point.

We had decided after our meeting with you that we would attempt to set out specific categories of persons who should receive approval for landing inside Canada. We had the impression that the recommendations which had been put before you by the Canadian Bar Association and the Law Union had raised some concerns on your part as to the feasibility of implementing them at this time. We wish to emphasize that we feel the recommendations suggested are appropriate and timely. We feel strongly that they should be implemented, particularly those regulation changes with respect to family members and the specific proposal of the Law Union as to the landing of persons presently in Canada without status.

We have drafted the enclosed guidelines more as an interim measure which could be implemented now. We feel that such guidelines could very much improve the present situation of persons who have humanitarian and compassionate reasons for wishing to remain in Canada. As well, we feel that the guidelines would assist immigration officers both here and in the visa centres abroad in understanding the spirit and intent of humanitarian policies of the Commission and the objectives set out in Section 3 of the Immigration Act, 1976.

. . . 2/

We have attempted to redraft the present guidelines set out in the Immigration Policy Manual IS 1.39 so that they deal specifically with our present concerns about application of the policies in the field and so that they are more in keeping with the spirit of our recommendations.

We hope that these suggestions are of some use. If we can be of further assistance please contact us.

Yours truly,

Barbara Jackman
Nancy Goodman

BJ/NG/db

c.c. Ms. Jill McGaw

We remain convinced through our discussions with other community, church and ethnic organizations as well as because of our experience in dealing with "illegals" and those legally here seeking landing inside of Canada, that some type of programme which would allow humanitarian consideration for landing inside of Canada of persons who clearly should be afforded special consideration is essential. As we have explained in our discussions with you and through the brief submitted by the Canadian Bar Association the present guidelines in the Immigration Manual set out in IS 1.39 are not working. Over the past few years in our experience, application of the IS 1.39 guidelines have been severely restricted in practice so as to be of little practical effect. We cannot emphasize strongly enough the need for clearer policies which, while allowing for individual discretion, direct officers of the Commission and particularly the Regional Offices of the Commission as to what categories of people are to be considered deserving of special treatment. We recognize the importance of discretion but at the same time see the need to minimize inconsistent treatment by the Commission within the parameters of the guidelines as they are applied to individual cases. More importantly, we feel there is a need to more clearly "fix" the criteria and categories in order to avoid varied interpretations from region to region and from time to time.

For the above reasons we are suggesting that certain categories of persons in Canada be specifically covered by guidelines or special programmes.

The need continues for a humanitarian perspective in Immigration policy, in keeping with Canada's often stated humanitarian tradition and in keeping with the objectives set out in Section 3 of the Immigration Act, particularly the objective of family reunification.

There are a number of preliminary points which we feel must be covered clearly in the guidelines to instruct officers in the field on the implementation of guidelines.

Exercise of Discretionary Power:

i Where discretionary power is exercised, decisions are evidently made on a case by case basis. This calls for careful consideration by the interviewing officer and the reviewing officers of the Commission, use of best judgement in making a recommendation, consideration of all relevant aspects of the applicant's situation and that of persons resident in Canada who are affected by the decision.

ii. In exercising discretionary powers officers of the Commission are under a legal duty to act fairly towards the applicant, ensuring that the applicant has had opportunity to present the evidence in support of his application and has had a fair opportunity to answer any concerns which the Immigration Commission may have about the application. Officers are under an obligation not to form an opinion on the application until the applicant has had this opportunity, and are not to let themselves be affected by concerns which are not relevant to the application, nor by impressions formed as to characteristics of a particular person's nationality, race or religious background.

iii. The guidelines set out are not hard and fast rules. They cannot answer all of the eventualities, nor can they be framed to do so. These guidelines are examples of the kinds of cases which would normally be considered as ones which merit special consideration within the broad context of humanitarian and compassionate situations. In this sense, applicants who do come within the parameters of the examples given would be expected to receive favourable consideration, and only in unusual circumstances would a negative recommendation be made. Those applicants whose cases do not fall within the examples set out should not be disadvantaged by this. Officers must realize that these are examples only and all cases must be considered. Officers are under a legal obligation not to fetter their discretion in examining cases coming before them. As such officers should be guided by the general framework of humanitarian and compassionate grounds that unusual, undeserved or disproportionate hardship would be caused to a person seeking consideration or to persons with whom the immigrant is associated, if he were not allowed to remain in Canada while his application for landing is in process. In assessing hardship officers should consider all factors including such factors as the expected length of time an application for landing outside of Canada would take, the effect of such a separation on the applicant and persons with whom the applicant is associated in Canada, the situation in the applicant's home country, the degree of dependency, financial, emotional or psychological between the applicant and persons in Canada, the degree of settlement and integration or potential for such of the applicant in Canada, the presence of close and extended family members in Canada, including Canadian born children of the applicant and de facto family members, and the applicant's age and health. These factors are not meant to be exhaustive nor decisive, and other factors considered relevant can and should be considered.

iv. Where it becomes apparent to an inland or visa officer that an applicant may have a meritorious case on humanitarian and compassionate grounds, officers are expected to investigate the situation to determine if special consideration should be given. Applicants should in practice be accorded the same treatement when unrepresented as those who have sought legal counsel and are specifically requesting consideration under the guidelines. Applicants without the benefit of legal counsel should be counseled by the officer as to what materials and documentation is helpful in establishing the case on humanitarian grounds, including proof of relationship, supporting letters and evidence of establishment of family members in Canada, and other such material which would allow a full assessment of the case. Officers who are not aware of the situation in a particular country should request that the applicant provide further documentation or should consult with the Regional Offices, who should be able to provide up to date and reliable information on problems in that country.

v. While many categories are only relevant to inland applications, officers at visa centres outside of Canada should be conscious of these guidelines and their potential application in overseas applications.

There are four major aspects of humanitarian and compassionate grounds which should be dealt with in the guidelines: i) close family relationships; ii) de facto residents; iii) persons who would experience difficulties with return to their country or origin or former habitual residence; and iv) special programmes where the situation in the home country is so serious, that it warrants exceptional measures for those persons presently in Canada and for those persons who have close relatives still remaining in the home country. These apply to individuals in Canada whether presently with or without legal status.

Close Family Relationships:

Hardship would result if landing were denied to a would be immigrant who is normally a member of the family household of a Canadian citizen or resident or who has a relationship of duration and significance with family members in Canada. Physical, emotional psychological and financial support and assistance are all factors to be assessed in such applications in addition to the factors set out in the general principles described above.

Examples of cases which by virtue of the family relationship should be expected to merit a recommendation for admission to Canada are:

a) all children falling within the family class regulations, ie. unmarried children under 21 years of age at the time the application for permanent residence is completed by the applicant child. "Children" includes children adopted and whoe adoption is recognized as legitimate according to the Immigration Regulations, as well as all unmarried children under 21 at the time of signing the application for permanent residence who are being sponsored by the putative father (provided relationship is satisfactorily verified through the presentation of birth certificates or other forms of verification).

b) children who have become orphaned or are alone as a result of the death of their parents or guardians, where there are close and responsible adult relatives in Canada willing and able to undertake responsibility for their care, maintenance and upbringing.

c) children, unmarried and under 21 who are the de facto children of relatives in Canada, ie. they have been raised and cared for by the adult supporting their application for permanent residence for a significant period of time during their lives and this adult resident relative has treated and has indicated a desire to continue to treat the child as his or her child. (Satisfactory proof of the existence of past relationship is required, through for example, the presentation of affidavits or letters of persons independent of the family.)

d) children unmarried and under 18 years of age who through a breakdown in the family support system in their home country would be best cared for by close and responsible relatives in Canada.

e) parents and grandparents of Canadian citizens or permanent residents who fall within a sponsorable category, or those who do not fall within a sponsorable category but are able to establish a financial dependency on the sponsoring relatives or there is a emotional or psychological dependency or a demonstrated family need such as the assistance of the parent in the care and upbringing of young grandchildren, recognizing the importance of the cultural nexus for these young Canadians.

(f) spouses of Canadian citizens or permanent residents where the marriage is one of substance and likely duration and one that has not been entered into solely to obtain permanent residence in a preferred class. Judgment in such cases should be sensitive and they should not be based solely on impressions or assumptions that certain types of marriages are not likely to be bona fide for example, where the marriage is an arranged one or where the couple are of different religious, racial or educational backgrounds.

(g) brother and sisters (or sons and daughters) presently in Canada over the age of 21 who have successfully established or have the potential to do so taking into consideration the presence of immediate and extended family members in Canada and their ability and willingness to assist.

(h) other extended relatives or de facto immediate relatives (for example a divorced daughter or sister-in-law or a de facto last remaining child over 21) where there has been a continuing relationship over an extended period of time or the situation is such that the relatives in Canada are the most logical ones to whom the relative can turn to for support and assistance to avoid living alone without a family support system. Consideration should be given in such situations particularly to those relatives who would be left on their own in their home country, either through the death or migration of close relatives.

De facto residents:

There are persons who, although not Canadian citizens or residents, nevertheless have been in Canada for a significant time and who have become established such that in fact, if not in law, they have their homes and residence in Canada. Hardship would result to such persons if they were required to leave Canada. Judgment in such cases will be sensitive and require assessment on factors such as the ones set out below. (This list is not exhaustive and is merely meant to be a guide for consideration of such applicants).

-how long has the person been in Canada;

- what are his family ties - including immediate, de facto and extended family ties:

-has the person integrated in Canada by making friends, belonging to church or other such social organizations, (if the person has not established such ties is there a potential for this and what are the reasons for not having done so)

-is the person established in Canada, either through his own efforts in supporting himself or through the continued assistance of family members who have indicated a close relationship and desire to have the person settle in Canada (if the applicant has not established himself, would the person potentially be able to successfully establish if his status were regularized-in such cases the officer should consider recommendation of a Minister's Permit for one year to permit assessment once the opportunity to successfully establish has been given to the applicant)

-has the applicant and his family good civil records while in Canada, aside from violations of the Immigration Act and Regulations of a less serious nature;

-what were the applicant's reasons for settling in Canada and for not wishing to return to his home country;

-has the applicant come forward voluntarily to make application or has it been the result of some conflict with immigration law (those not voluntarily coming forward are still to be considered under these guidelines, and this factor should be taken as only one of the many factors involved in an assessment);

-what is the situation in the applicant's home country and the likely future for the applicant there. The future of the applicant's children should be particularly considered where there are Canadian born children of the applicant who would in effect be returning to the home country with the parent applicant if rejected.

Examples of cases which should merit positive recommendation for admission to Canada:

a) persons who have been in Canada three years or more who can be positively assessed on the criteria set out above in that they have successfully established, have the potential to successfully establish, or who have close family relationships such that their successful establishment can be assumed to be possible. Persons who have the potential to successfully establish should be put on Minister's Permits for one year with an assessment for landing deferred in the interim. This example covers persons who have been in Canada legally on work authorizations and persons who may have entered legally or otherwise who have remained without status, but as a result of their actual or potential successful establishment or close family relationships here should be allowed to remain.

b) students who have been in Canada legally for a period of six years or more who demonstrate successful integration into Canadian society and who in the opinion of the officer would be able to potentially successfully establish in Canada, taking into consideration their course of study, their financial self sufficiency or the presence of close relatives resident in Canada willing to assist in settlement, and their initiative, motivation and willingness to achieve as demonstrated by their record while in Canada.

c) domestic workers, nannies, housekeepers and other related home care workers who initailly came to Canada as domestic workers but whose authorizations to work were not renewed, who have remained in Canada and have settled here successfully or through regularization of status could successfully establish;

persons who came to Canada to take employment as domestic workers or in related occupations but did not obtain the required authorization due to misinformation given by agencies or employers and have remained; and persons who have been employed as domestic workers or in related occupations for a period of three years. Where there is a concern about potential successful establishment persons in this category should be put on Minister's Permits and included in the Foreign Domestic Programme as though they were "new entrants".

Difficulties with return to country of origin:

Hardship would result if facilitation is denied to a would be permanent resident who would face difficulties in returning to their country of origin. Knowledge of the international situation is required for the assessment of these claims. Hence the Special Review Committee in Ottawa has been set up to review:

-all applications seen by the Refugee Status Advisory and found not to be refugees;

-applications referred by field officers where any special refugee or humanitarian programme exists (officers should not refuse to refer such cases and, where the officer is aware of the programme but the applicant may not be, the office should ensure that every effort is made to fully advise the applicant of the existence of the programme as an avenue of application);

-applications from any country which has severe exit controls;

-applications from any country where the officer wishes special guidance (officers should not refuse to forward applications to the Committee for consideration simply because the officer is of the opinion that there are no problems in the country of origin of the person-as long as the applicant has established a legitimate concern about difficulty which could be experience in returning to the country of origin, through plausible evidence, the case should be referred)

In order to approve such applications the Committee will be guided by the following critieria. These criteria are not exhaustive:

a) humanitarian and compassionate guidelines set out above covering close family relationships and de facto residence (in these cases the Committee should be particularly careful to apply the existing criteria regardless of the initial decision taken by the Commission.

b) where the claim of oppression (as opposed to personal persecution) is so rigorous or severe as to make it inhumane to return the applicant;

c) where the claim of serious hardship arising out of problems of a more personal nature, for example, where moral codes have been broken which may lead to ostracism or physical harm without the protection of law enforcement agencies, or where serious sexual discrimination in the home country exists, such that it would be inhumane to return the applicant;

d) persons from countries with severe exit controls who have overstayed their exit visas and who as a result of returning home would suffer punishment of inordinate severity in relation to their overstaying;

e) persons who could not apply from their home country but who would have met selection criteria had they been able to do so;

f) persons who because of some special family situation, not covered by the guidelines on humanitarian and compassionate considerations should be allowed to remain;

g) persons who are members of officials delegations, athletic teams, cultural groups, church personnel, or academics who by seeking to remain in Canada will so embarass their government as to leave themselves open to severe sanctions should they return home, or who have otherwise publicly taken positions critical of their government such that there is the possibility of severe sanctions through their conduct or statements;

h) persons requiring some special form of care, available and offered in Canada and which is not available in their home country;

i) persons who have achieved success in their home country, or who because of their age have not had the opportunity to achieve success but would be likely to successfully establish themselves, but who nonetheless articulate a clearly felt need to live in a democratic system and demonstrate that they are prepared to sacrifice to achieve this desire (this includes persons coming from countries which are democratic in form but not in fact).

Special Programmes

In addition to the criteria established for the Special Review Committee in considering applicants who would experience difficulties in returning to their countries of origin, there are a number of countries where the situation has become or is becoming so serious that special programmes should be implemented to facilitate the landing inside of Canada of nationals of these countries. The need for a special programme in our view is particularly pressing where there are a significant number of nationals from a particular country already in Canada either legally or illegally, or where there is a well established community of Canadian citizens or residents here originally from a particular country who have serious concerns about the safety and well being of their close relatives remaining in that country. The Immigration Commission already has established programmes for nationals from various countries, such as Iran, Poland, Lebanon, El Salvador, and pre-visa Chileans. Based on our experience, we are of the opinion special programmes are long overdue particularly for Guyana, Ethiopia, for Kurds in Iraq and Syria and for the Jews of Argentina. It is becoming apparent that there is likely to be a need for another special programme from Chile as the persecution in that country escalates. These special programmes should follow the format applied to those programmes presently in operation.

Guatemalans who are in Canada should not be returned to that country. Massacres and arbitrary murders of persons are widespread, particularly with respect to peasants. Recent documentation by such organizations as Amnesty International make clear the severity of the present situation in that country.

The problem in Guyana is presently acute. The recent report by the parliamentary sub-committee on human rights in Latin America and the Caribbean have recognized the profound problems in that country, such that the safety of its citizens cannot be guaranteed. There are organized squads, some of which include the armed forces and police, who are operating in a systematic manner to intimidate or silence all opposition to the P.N.C. government. In addition, there are gangs or individuals who are robbing and burning homes, raping women, seriously wounding residents and even murdering them for non-political reasons. There are numbers of Guyanese who have chosen to come to Canada, most of them to reunite with relatives here, who have preferred to risk the hazards of living in Canada without status to the uncertainties of their safety in Guyana.

A special programme should be developed for Ethiopia. The central government in Ethiopia is waging a war against minorities — the Omos, Tigris, Eritreans, ethnic Somalians and the Falashas, to name the major minority groups. These minorities comprise approximately 50% of the country's population.

The plight of certain minority groups should also be recognized and special programmes developed for them. Kurds, particularly from Iraq and Syria and to a lesser extent from Turkey face severe persecution, persecution which is well documented. The Jews of Argentina have faced increasing persecution. If, as expected, a Peronist government were to take power in the elections it is anticipated that anti-Semitism will heighten even further.

As most special programme applicants can be reviewed and accepted on the basis of the criteria set forth in the special programme, it should not be necessary to have all cases reviewed by the Special Review Committee. Rather, the Committee should be referred only those cases which would otherwise be refused. This would reduce the number of cases before the Special Review Committee and would ensure more rapid processing.

The countries identified are those where there is a clear need for a special programme. These are based on our experience, and there may well be other countries which should be included. More constant monitoring of the international situation is necessary for the timely recognition of problem situations. In this way, Canada can continue to live up to its humanitarian reputation and significant problems with illegals from these countries can be avoided.

APPENDIX CC

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April 25, 1983.

Mr. W.G. Robinson,
Special Advisor,
Immigration Policy,
P.O. Box 2090,
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Hull, Quebec.
J8X 3Z2

Dear Mr. Robinson:

Re: Illegal Immigrants
Issues Paper

I have read with interest the above mentioned paper and would like to make a few comments expressing some of my concerns.

1. I agree that the sum of 200,000 "under-ground" illegal immigrants is excessive. I would be inclined to believe that the number is closer to 40,000. The 1973 amnesty dealt with many illegal immigrants. Since then, the number of people who have come into the country by air, are required to have a return ticket.

2. In my view, amnesty is not the solution. Repeating an offer of amnesty would make a mockery of Canadian laws and would lessen Canada's prestige internationally. It would also imply that we are "too soft" and that we are unable to make tough decisions, even when our own interests are at stake.

. . ./2

3. My riding does not support amnesty, nor do they agree to an easing of the laws and regulations which allow immigrants into the country under"so-called humanitarian, compassionate and/or refugee grounds. I think the public generally is "fed up" with the altruistic attitude that Canada can be "all things to all people". We must be more perspicacious in our decisions, and accept that limits must be set on "our altruistic notions". Canada can not become the repository for everyone who wants to enter.

4. Some consideration should be given to "special" cases. However, these cases should be examined with discretion and not allowed to become precedent setting. "Legal sharks" and so called immigrant counsellors should not be able to use these avenues for financial gain.

5. We do not need a "police state" in order to accomplish our goals. The cost of properly controlling the situation should not exceed the cost of maintaining, feeding and housing illegal immigrants; not to mention providing them with the legal advice they will need.

6. Why do we allow the residents of some 80 countries to come to Canada without visas? I doubt if any other country in the world is so lax in this kind of control. It is as though we are indifferent to what happens to, and within, our Country. We do not seem to know who comes in or who goes out, legally or illegally. Nor do we know who returns, legally or illegally.

7. In immigration cases, as I understand them, the only way to prevent people from circumventing and flaunting our laws, is to impose the visa process as a first measure. Canada should not, as a general rule, be required to carry the onus of substantiating refusal. The applicant should reasonably be required to establish his or her own case.

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8. A refugee should not be defined by his/her economic status. Nor should we necessarily extend a refugee status to an individual facing charges for illegal activity in his/her country of domicile. It is not Canada's place to get directly involved in the domestic affairs of other countries.

9. There should be more control exercised over entrants into Canada from countries such as Jamaica and Guyana. Entrants from these countries have flagrantly abused our laws and procedures and shown a complete disregard for law and order. We owe no special debt of gratitude to these countries nor do we have any obligations to them legally, morally or otherwise.

10. We can correct the weaknesses in our system, but in order to do so we must have the will and the desire to carry out the necessary measures. Exceptions should not be made on the basis of "misinformation as to the accessibility of Canada and the opportunities available here". It should be common knowledge that we have high unemployment, which makes it difficult for immigrants to establish themselves without affecting job opportunities for Canadians.

11. Frustrations in processing applications could be resolved by changing the regulations and thus limiting the number of applicants. As long as people feel they have a "right" to come to Canada, they will continue to apply, regardless of the time and cost involved for them and for Canada.

12. Many immigration centres abroad should be closed, or cut back in staff, in order to reduce the flow of immigrants and to deter them from entering Canada. There is no sense in processing applicants who will not be admitted, if only by reason of Canada's present domestic unemployement situation.

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13. How can a person be defined as a "bona fide" applicant merely on the basis that he has no "criminal record" in Canada? Any contravention of a federal statute has criminal connotations and a criminal sentence by way of penalty. Though we may not call this a "criminal record" under the Criminal Code of Canada, the person may still have a "record". (i.e. Narcotics Control Act)

14. By legalizing illegal immigrants, as proposed, we make a further mockery of our laws. Two "wrongs" do not make a "right", we are merely compounding the problem.

15. The "ripple" effect occurs when one immigrant is granted entry and then proceeds to sponsor relatives for entry. It should be understood that to allow one illegal immigrant to stay, does not give he/she the "a fortiori", the right to sponsor other family members.

16. "A probationary period of six years before the granting of Landed Immigrant Status" is not satisfactory. Anyone who has been in the Country for six years, would not be deported, except under the most unusual set of circumstances. The "six year probationary period" would tend to encourage people to consider a six year stay in Canada, as a visitor, with all the rights of Canadian citizenship and none of the responsibility.

17. It has been suggested that an "alternate delivery mechanisms might be considered to encourage illegal immigrants to come forward". I believe we should make clear that a "delay" in coming forward will be taken into consideration and given considerable weight when a discretionary decision is to be made in such cases.

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18. Entry into, and exit from Canada, should be more closely monitored. This is easily done by placing the information on computer at the time of "entry" and "exit". We could also require individuals to "exit" from the point of entry. The scheduled "exit" day could be put on the computer so that we would know who should leave the country on any given day.

19. Customs and immigration officers at border points should be interchangeable. The extra skill could be acquired on-the-job and provide an additional challenge. This would cut cost, as two officers would no longer be needed to process each person.

20. Visitors should be advised that they will be penalised if they illegally prolong their stay in Canada. The passport document should also be stamped to indicate government policy.

21. Immigration officers and police should seek out illegal immigrants. We should be as attentive to illegal entry into the country, as we are to any other offence which occurs at the border. To say that the law is unenforceable is no answer. If this is true, there is no reason to have the law in the first place. We either know, or should know: who comes into the Country, where they are staying, and when they are expected to leave. If we establish some kind of control, we will not have to spend money employing full-time officers to investigate.

22. Finger printing deportees is a reliable control mechanism, but only once the individual is caught. However, this procedure along with other documentation safeguards can be helpful. The country of origin should be notified when someone has been deported and the individual's passport, or other travel documents, should be stamped with the appropriate information.

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23. There should be a "reverse onus" on employers to determine if the individual is a Landed Immigrant and/or has a valid work permit. Surely contacting the local immigration office is reasonable.

24. Social Insurance numbers should be more carefully controlled. Right now, there appear to be no security measures whatsoever. It should also be an offence to have an illegal SIN number. Anyone losing a SIN card should be required to notify a central office.

25. Reciprocity is not the answer to dealing with our visa problems. Most people want to come into Canada, while few seek entry elsewhere; except perhaps into the United States. To exempt some 80 countries from visa requirements is far too costly a process for Canada. In most cases a visa should be required. To plead a right to enter, on the basis of being someones relative and/or friend, is not valid. Exceptions as you know can always be made when a special need arises.

26. It should be understood by potential immigrants and visitors that coming into Canada is a "privilege" and not a "right".

27. Illegal use of passports and visas would be allevieted with better controls and security measures. Right now, Canada is too lax in this area. Charges should be laid for unlawful use of passports and a follow up made for breach of security where passports are concerned.

28. It would appear that immigration officers need better training in security work and customs work as well. They should also have increased police powers to properly enforce the law and carry our their responsibilities.

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29. A quota system should be considered, which would let people know how long they must wait before becoming elligible for entry. This would be determined by the category or classification assigned to them.

30. The clauses of the immigration act with regard to "sponsorship" and "family reunification" should be limited, otherwise, we are opening a "flood gate" for literally millions of applicants. Our present system operates like a "pyramid scheme"; by allowing one immigrant in we are opening the door to many others (family, friends etc...through sponsorship). The "ministerial discretion approach" is not sufficient to halt the "pyramid scheme", because it means that immigrants who may not otherwise have gained entry into Canada, are allowed in. We then face the problem of families and friends of these "special cases" entering. Limits must be set, but no one seems interested in setting or implementing them.

31. The concept of a "sponsored" visitor has merit in that the sponsor is responsible and liable under the sponsorship agreement. One could enter into a bonding arrangement but this of itself would not necessarily be sufficient. A term of incarceration should be imposed upon both the sponsor and the person who is being sponsored, when there has been flagrant abuse.The person who has been sponsored should be deported at his own expense or at the expense of the sponsor.

These are some of my concerns and suggestions. I would be available to discuss these and others at a mutually convenient time if I can be helpful.

Yours truly,

W. Kenneth Robinson,
Q.C., M.P.,
Etobicoke - Lakeshore.

WKR/ec.

STATEMENT submitted by WALLACE PATRICK BECK on the question of extending amnesty to illegal immigrants and related problems

As a practicing lawyer I have dealt with immigration matters since 1969 and have dealt with people attempting to become permanent residents in Canada from different countries but primarily with people from the State of Punjab of India, and also people of Indian background from Fiji.

During the period when the old Immigration Act applied, I acted for many independant applicants who applied from within Canada and I did become familar with the application of the point system in the evaluation of those applying to become permanent residents. I also dealt with people who were granted landed status through the Amnesty of 1973 and for many people who gained such status in a summary way to overcome the backlog of appeals to the Immigration Appeal Board.

More recently because of visa restrictions and the state of the world economy immigration work has become a smaller part of my practice. I have been dealing more with the family class application and have appeared before the Immigration Appeal Board and the Federal Courts from time to time. I have shared some of my thoughts on the question of general amnesty and other related problems with Myra R. Elson of my office who does practice immigration law.

I would doubt that there are anything approaching 200,000 illegal immigrants in Canada. It is realized that the situation is somewhat different in Eastern Canada where there are heavier population areas and where such people may not be identifiable. However, in the Western provinces I would be certain that the problem is not serious. It is my feeling that because of the economy in Canada and the controls on employment that it has become less attractive for an illegal immigrant to remain in Canada. Indeed, I would say that anybody that has been able to remain underground without family assistance would be a person who portrays some ingenuity and high motivation.

In those cultures where there are close extended family units there seems all too often apparent inter-family rivalry and animosity and it is therefore common that a person who is underground is exposed by an informer. I believe the number of illegal immigrants has been made less by applications for Convention Refugee Status. The majority are not refugees according to the United Nations definition, however, many of these people hope that there will be a general amnesty before they are required to leave Canada. As I understand it, the Refugee Status Committee is now dealing with these people more quickly and eventually most will be subject to deportation proceedings.

As I see it, when it comes to the question of whether there should be some form of amnesty and whether certain individuals should be granted legal status, we should review Canada's immigration policy as it presently affects would be immigrants. It is my respectful opinion that the emphasis on family class of sponsorship and the changing criteria virtually closing the door on the independant applicant to Canada, has not been good for Canada.

I do agree that it is most beneficial to encourage people who can inject capital and business acumen to come to Canada. Those that can promote secondary industry must be encouraged. The Immigration Commission has wisely had its Visa Officers abroad inform themselves of the needs in particular areas of Canada and there has been a closer liason developed between the responsible provincial agencies and the Immigration Commission to encourage investment and business growth in Canada. For instance, I think the Canadian economy has been greatly assisted by the influx of many people from Africa, many who have left their home countries because of political oppression. Many of these people from Asian backgrounds have generally assimilated and have become part of the Canadian scene. These people have brought with them both capital and talent.

On the broad question of amnesty I feel that the needs of Canada should be the prime concern and any policy on immigration should not be dictated by political expediency or popularity. Neither do I feel that the question of amnesty should be affected by the poor economic climate. I believe that a highly motivated, energetic and hard working immigrant is beneficial to our country in the long term. In other words, I do not feel that we should be short sighted. Canada can afford to be selective and should be self-serving in its choice of people to become permanent residents. If an illegal immigrant can contribute to the country because of some skill or personal attribute then he or she should be allowed to remain with legal status.

Illegal immigrants should be encouraged to come forth to be assessed and those that do not qualify should be allowed to leave Canada voluntarily without the handicap of a deportation order. I would suggest a committee of at least three experienced immigration officers or people chosen by the Minister who could assess such people. Apply the point system of assessment if you will, however, a factor of zero demand for skill or job category should not close the door on these people. This committee should have the power to recommend landing on humanitarian and compassionate grounds.

If there is some doubt in the minds of the committee as to whether a person should immediately qualify for landing then it may be that that person should have the opportunity to stay for a period of one year in order that such person could show his or her ability to function without the handicap of being an illegal immigrant and being underground. The person who clearly does not qualify should be offered the payment of passage to his or her country of origin to encourage a voluntary departure. I feel that if amnesty was handled in this manner, then it would not offend most Canadians and from a publicity point of view I would suggest that if there is to be an amnesty that some public statement be issued including the reasons why such is necessary and further reasons as to why an amnesty would not be necessary again. This I think would satisfy most Canadians. The visa restrictions on entry into Canada were long past due, they should have been instituted long before the refugee problem arose.

We all have differing ideas on the future of Canada. I tend to be somewhat nationalistic and for a strong Canada with vigorous people. Our present immigration policy, with respect, has not been good for Canada.

There seems to have been little immigration to Canada save and except for the family class applications. It is my respectful opinion that this recent emphasis has weakened the quality of the landed immigrant. It encourages those cultures who have a greater emphasis on the extended family to come to Canada en masse and these people then tend to preserve their culture and become somewhat inward looking, which can be bad for Canada.

Families whose culture emphasizes strong family ties seem to have dominated the majority of immigrants during the past years. The strong individual parent figure from a culture that does not emphasize the family connection, does not expect to join a son or daughter in Canada. In other words, we are receiving numerous family members who are just not as motivated or suitable immigrants as were the original sponsors. An older son or daughter who has come to Canada as an independant applicant and who may have become an excellent citizen in many cases nominates a family with children under the age of 21 years. These children, with all due respect, may not have the motivation or intellect of the older child who was screened or processed.

Unfortunately, these extended family units tend to preserve their ethnic community to the point where we have invited the hostility of racists and bigots. There is growing in Canada a racial disharmony. These' may be unpopular notions, but they must be recognized.

The issue of the sponsored married class has been most troublesome to the Immigration Commission. There are particular problems where in some cultures the marriage is prearranged by the families and the spouses may not meet or know each other prior to the marriage ceremony. Some of these marriages by their very nature can only be preserved by strong cultural loyalties and pressures from the ethnic community involved. It has been our experience that when one of these marriages breaks down, perhaps because one of the members has been more influenced by a strictly western approach to marriage, then many personal difficulties occur that disrupt these family units to the detriment of our society. It may be quite difficult for the person who has resided in Canada because of marriage to a Canadian, to have to return to the country of origin or to leave Canada. We are aware of many unfortunate consequences particularly to the female members of such families. It may be that landed immigrant status should not be given to a new spouse until say two or three years, although this may promote an insecurity that would affect the marriage.

Perhaps these comments are not appropriate at this time and should perhaps be considered elsewhere, but I feel personally they must be said even though these reflections are unpopular.

POOR

QUALITY

ORIGINAL